

# Exhibit D

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 04-10131

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HEATHER KIERNAN,

Plaintiff

**CERTIFIED ORIGINAL  
LEGALINK BOSTON**

vs.

ARMORED MOTOR SERVICE OF AMERICA, INC. and

FRANCESCO CIAMBRIELLO,

Defendants

----- x

DEPOSITION OF CHRISTOPHER W. ABREU

Thursday, June 2, 2005 - 10:15 a.m.

MORGAN BROWN & JOY, LLP

200 State Street - 11th Floor

Boston, Massachusetts

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Reporter: Maureen J. Manzi, CSR

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## I N D E X

CHRISTOPHER W. ABREU

BY MR. MCLEOD 4, 90, 103, 106

BY MS. ROMANTZ 68, 98, 105

## E X H I B I T S

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\*Exhibit 1 and 2 included in the transcript.

\*Exhibit 3 retained by Attorney Romantz.

1 even. I remember it being a healthy stack of  
2 videotapes.

3 Q. Did you have any understanding as to what  
4 the status of the proceedings were against the  
5 defendant at that time?

6 A. No.

7 Q. Did you know whether or not he had already  
8 been indicted?

9 A. No.

10 Q. When you were given the tapes, did you  
11 already have an appointment to meet Mr. Ardito at  
12 the facility?

13 A. Yes.

14 Q. How was that appointment made?

15 A. It must have been made by Chris Markey or  
16 Chris Saunders.

17 Q. So you didn't make it?

18 A. No. I was just told that -- I was just  
19 asked if I could go watch the tapes at a certain  
20 time with David.

21 Q. And have you met Mr. Ardito prior to that  
22 day?

23 A. Yes.

24 Q. Had you worked with him on other cases?

1 A. Yes.

2 Q. Had you worked with him on this case?

3 A. No.

4 Q. After you took the tapes -- let me back up.  
5 when you took the tapes, where physically were you?

6 A. In the Attleboro District Court office.

7 Q. When you went to AMSA, did you take your  
8 car?

9 A. Yes.

10 Q. What kind of car was that at the time?

11 A. It was a '96 BMW.

12 Q. And you drove to AMSA?

13 A. Yes.

14 Q. In the car?

15 A. Yes.

16 Q. Where were the tapes in the car when you  
17 were driving?

18 A. Within my possession.

19 Q. Front seat, back seat, trunk?

20 A. Front seat probably I think.

21 Q. Did you have a briefcase with you?

22 A. Yes.

23 Q. Any other bags or --

24 A. No.

06/02/2005

15

1 Q. No. Did you drive right to AMSA?

2 A. Yes.

3 Q. When you drove to -- pardon me. When you  
4 arrived at AMSA, who did you meet and where were  
5 they? Who was the first person you met and where  
6 were they?

7 A. I don't totally recall. It might have been  
8 I met with David outside.

9 Q. You say might have been.

10 A. I'm not totally sure. And then we went in.  
11 I don't know who we met or how we got in. It was I  
12 probably met David outside.

13 Q. And you and Mr. Ardito walked into the  
14 facilities together?

15 A. Yes.

16 Q. Did you have to buzz or hit a doorbell or  
17 anything like that to get in?

18 A. I think so because I think it was a metal  
19 door with a camera outside of it.

20 Q. Did you have to sign in?

21 A. I don't recall so.

22 Q. And who did you meet when you walked into  
23 the facility?

24 A. I met with somebody from the Security

1 Department from there. I don't recall his name.

2 Q. Jason Cory, does that ring a bell?

3 A. No.

4 Q. Did you have to show any identification when  
5 you arrived?

6 A. Not that I recall.

7 Q. Did Mr. Ardito?

8 A. Not that I recall.

9 Q. And you didn't sign anything?

10 A. Not that I recall.

11 Q. In preparation for the deposition, did you  
12 talk to anyone today?

13 A. No, I haven't.

14 Q. When was the last time you spoke with Mr.  
15 Ardito concerning this case?

16 A. It was at the motion, at the criminal trial.

17 Q. The motion hearing?

18 A. (Witness nodded affirmatively.)

19 Q. So you met somebody from security?

20 A. Yeah.

21 Q. And you knew they were from security because  
22 why?

23 A. They must have introduced themselves to me  
24 as the security representative.



1 you brought them back?

2 A. Well, I can only say this. On any normal  
3 case, there's no question I would have taken them  
4 back to keep a chain of custody. In this case, the  
5 only way I would have left them there is because  
6 nobody had the technology to tape them at a frame  
7 where they could watch it on any regular VCR.

8 Q. Let me ask you this. When you say take them  
9 back, what I'm trying to figure out is were you  
10 going to be handing them to Mr. Saunders, putting  
11 them in his office, putting them in a room that was  
12 for films that was ceased, something? What was the  
13 procedure, if anything?

14 A. In my normal course, I would have just put  
15 them back in his office.

16 Q. And he had his own office, he wasn't in a  
17 cube or anything like that?

18 A. He had his own office. We all had our own  
19 office.

20 Q. How long had you known Mr. Ardito up to that  
21 time?

22 A. Tough to say. Maybe a year. Maybe I had  
23 some cases when I was in Taunton. And I saw him  
24 regularly when I was in Attleboro.

1 A. I know it wasn't a suit. Maybe pants and a  
2 shirt.

3 Q. Other than this gentleman that you met at  
4 the door, did you meet anybody else at the facility  
5 that day that was employed by AMSA arguably?

6 A. Not that I recall. I mean, there were other  
7 people I believe there. But did I specifically meet  
8 with anybody, no, I don't recall.

9 Q. You weren't introduced to anybody else?

10 A. I don't recall being introduced to anybody  
11 else.

12 Q. How long were you at the facility that day?

13 A. To the best of my memory, maybe a couple of  
14 hours. Maybe an hour. Between an hour and two  
15 hours.

16 Q. Now, did you go over there in the afternoon?

17 A. Yes.

18 Q. What day of the week was it?

19 A. I don't recall.

20 Q. That morning you would have done  
21 arraignments or something in the district court?

22 A. I think I was actually in the trial side.  
23 So basically in a typical morning if I'm in the  
24 trial side, I would take all my matters and be

1 Q. With all these trials, did you have to work  
2 weekends?

3 A. No. I would bring stuff home at times.

4 Q. What time would you typically get in the  
5 office in the morning?

6 A. 8:00.

7 Q. What time would you leave?

8 A. 5:00.

9 Q. When you arrived at the facility and you  
10 were met by the security individual and Mr. Ardito  
11 was with you, what was the next thing that happened?

12 A. I believe we went to this individual that we  
13 met with, this security agent at his office. The  
14 only thing I remember about this office is he had  
15 some toy police cruisers in his office. That sticks  
16 in my head. And then after we left his office, we  
17 went to watch the videotapes.

18 Q. Did you play with the cruiser?

19 A. I just found it out of the head toy cruisers  
20 in his office. I didn't have a chance to play with  
21 them.

22 Q. And then you went to the room where you  
23 viewed the tapes?

24 A. Yes.

1 with the security gentleman, Mr. Ardito was with  
2 you?

3 A. Yes.

4 Q. Did you sit down?

5 A. I don't think we sat down, no.

6 Q. You had the tapes with you though?

7 A. Oh, yeah.

8 Q. Were they wrapped up? Were they in an  
9 envelope or anything like that or were they kind of  
10 just bound by rubberband?

11 A. Just by rubberband from what I remember.

12 Q. Did you have any understanding as to how the  
13 D.A.'s office came into possession of these tapes?

14 A. At that point in time, I did not. I later  
15 learned.

16 Q. What did you later learn?

17 A. That the Attleboro detectives confiscated  
18 it.

19 Q. Do you know whether or not they confiscated  
20 them all at once or on different occasions?

21 A. I don't recall.

22 Q. After this day, was that your one and only  
23 involvement with the case other than testifying at  
24 the motion hearing?

1 A. Yes.

2 Q. Now, did you take -- strike that. When you  
3 started watching the tapes -- let me back up even  
4 more. When you walked into the room, what did you  
5 do with the tapes?

6 A. I believe they had either letters or numbers  
7 on them, either A, B, C or 1, 2, 3. And with that  
8 and we just started putting different tapes in to  
9 see which one was relevant to what we wanted to  
10 watch.

11 Q. Did you have an understanding as to what it  
12 was you wanted to watch?

13 A. Yes.

14 Q. When you say we were putting them in, who  
15 was putting them in the VCR?

16 A. I believe I had the stack of tapes and I  
17 just gave them to the security representative to try  
18 looking for the ones that would show the parties  
19 involved in this case.

20 Q. Did you look at more than one tape?

21 A. Yes.

22 Q. So you had the stack of -- did you say it  
23 was five or six or four or five tapes?

24 A. I just remember it being a stack. Either

1 four or five or six.

2 Q. So you had a stack of tapes?

3 A. Yes.

4 Q. And then you would hand off a tape to the  
5 security guy?

6 A. Um-hmm.

7 Q. He would stick it in the VCR?

8 A. Um-hmm.

9 Q. You might or might not watch it for a bit  
10 depending on what was on there?

11 A. Um-hmm.

12 Q. You watched more than one tape?

13 A. Right.

14 Q. When you went to grab the second tape from  
15 the stack to hand to the security guy, what happened  
16 to the first tape or what happened to the tape you  
17 were watching, did he give it back to you?

18 A. When he took it out, I don't recall. Either  
19 he gave it back to me or he just put it down on the  
20 side.

21 Q. Did you watch all of the tapes?

22 A. I believe we would put -- I believe we put  
23 in all the tapes just to see if there was anything  
24 pertaining to the incident, but he could quickly

1           A. Well, basically I knew I was looking for  
2 just -- if I recall right, there were only two  
3 people in the establishment, and I just wanted the  
4 tapes that depicted where they were during this  
5 alleged incident.

6           Q. And did you communicate that to him at some  
7 point or --

8           A. Oh, yeah.

9           Q. When was that?

10          A. While we were putting the tapes in.

11          Q. It wasn't in his office?

12          A. No, I don't think so.

13          Q. Did Mr. Ardito have any discussions during  
14 this time while you were watching the tapes? What  
15 was he doing?

16          A. Well, he also wanted to see certain  
17 segments. Basically from what I recall, the tapes  
18 that we were looking for were tapes where they  
19 initially were working together. Wherever they  
20 moved, okay, you might have to put a different tape  
21 in because we wanted to keep that chain of whatever  
22 they were doing. We might have to go through two or  
23 three tapes to get to that.

24          Q. You wanted to watch it in sequence?

1 strengthen my thoughts that the tape was actually  
2 divided, okay, into six screens. So with this  
3 security system you had -- if you wanted to put up  
4 frame 16, you would type up 16 or hit a button for  
5 16, and frame 16 at that time for tape D would come  
6 up on the screen.

7 Q. You said the screen was divided into six?

8 A. I think so. Six or four. I just remember  
9 him pulling up different segments of a screen, to  
10 the best of my knowledge. I don't have a perfect  
11 memory of it, but that's what I think.

12 Q. To the right of number 16 there's a space it  
13 appears and then quotation marks.

14 A. Um-hmm.

15 Q. What does that say, please?

16 A. "I'm not going in there."

17 Q. Does that refresh your recollection as to  
18 what you saw on the tapes?

19 A. Oh, yes, I remember.

20 Q. What was it, please?

21 A. Well, on this frame of the tape, the alleged  
22 defendant at the time, they had gotten up from an  
23 area where they had been working and they began  
24 walking. And if I remember right, suddenly you hit



1 hands around her waist vicinity, then they walked  
2 down the hallway together. You could only see the  
3 back of their heads. And then they went to another  
4 dead spot, camera angle. You couldn't see them  
5 anymore. Then we had to go to another tape to  
6 continue that chain.

7 Q. You mean other than D and F?

8 A. No. We had to go from tape D to tape F --

9 Q. Okay. Thanks.

10 A. -- to keep that chain of where they were  
11 walking to. That tape F then shows them walking  
12 into an office.

13 Q. Was there audio on that tape?

14 A. I don't recall hearing any audio. Well,  
15 what I recall, these tapes were very, very bad as  
16 far as audio goes. You could not really hear much  
17 of anything. Okay. And that's why the "I'm not  
18 going in there" kind of jumped out at me because I  
19 want to say that's one of the only statements I  
20 heard on the tape.

21 Q. Then you have underneath 17:40:31 under  
22 letter F?

23 A. Um-hmm.

24 Q. What does that time represent?

1 A. That would be the time that I recall that  
2 she left the office on the videotape.

3 Q. And underneath that it says 17:34:02?

4 A. Correct.

5 Q. With an arrow in -- what's that handwriting?

6 A. "In office."

7 Q. "In office"?

8 A. Yes.

9 Q. What does that mean?

10 A. I don't recall.

11 Q. Is that when you saw them go into the  
12 office?

13 A. I don't recall.

14 Q. On tape F you couldn't hear any audio at  
15 all?

16 A. No.

17 Q. When you saw her leave the office, did you  
18 see at some point the defendant leaving the office?

19 A. I believe he left the office sometime after  
20 her. She left first.

21 Q. What was the time span between her leaving  
22 and him leaving?

23 A. Maybe a minute or two. A few minutes. It  
24 wasn't that long.

1 there any radios going or anything like that?

2 MS. ROMANTZ: Just to clarify. When he  
3 was watching the videos or while --

4 Q. While you were watching the videos.

5 A. While I was watching the videos, was  
6 anything going on. I believe people were working,  
7 but my attention wasn't drawn to anything specific.

8 Q. Was the door open or closed?

9 A. I don't recall.

10 Q. Was the room windowed?

11 A. The room where I was watching the  
12 videotapes?

13 Q. Um-hmm.

14 A. No.

15 Q. This might seem stupid. But was it hot in  
16 there with all that equipment?

17 A. I don't recall.

18 Q. You were in there for a couple of hours in  
19 that room?

20 A. An hour, a little more than an hour.

21 Q. What kind of conversation was going on in  
22 the room while you were watching the tapes?

23 A. We were basically just trying to, David and  
24 I to agree on what we heard to make sure we were

1 seeing and observing the same thing.

2 Q. Did you ask him if he agreed with the  
3 statement "I'm not going in there"?

4 A. I'm not sure, but I know I heard it.

5 Q. When you say you were having these  
6 discussions about whether or not you could agree or  
7 disagree in terms of what you were seeing on the  
8 tapes, you were having those discussions  
9 contemporaneous with the viewing?

10 A. Correct.

11 Q. Are the notes that have been marked as  
12 Exhibit 1, do they reflect some of the subject  
13 matter that you were discussing with Mr. Ardito at  
14 that time?

15 A. Not so much what I was discussing with Mr.  
16 Ardito. But what I was doing is just because this  
17 was just a quick initial viewing of the tapes, what  
18 I was doing was anything that I found somewhat  
19 compelling, I would write down. So I would -- and I  
20 just wrote these notes down to give back to Chris  
21 Saunders so he could then give them to Chris Markey  
22 and just go to those tapes to look at those points.

23 Q. With regard to the notes. Were you going to  
24 be preparing any report or memorandum or anything?

1 day?

2 A. I'm not sure.

3 Q. Is this the only page of notes you gave to  
4 Mr. Saunders?

5 A. I'm not sure.

6 Q. And let me qualify it. Did you give these  
7 notes to Mr. Saunders?

8 A. I don't recall. I either just left them in  
9 his office with the videotapes if I had them. I  
10 just don't recall. If I had brought the videotapes  
11 back like I think I would have, this would have been  
12 left with the videotapes, folded up and thrown on  
13 top of with the elastic.

14 Q. The reason why you had gone to AMSA that day  
15 is because you didn't have the equipment to look at  
16 the videotapes?

17 A. Correct.

18 Q. Did you have any understanding that day as  
19 to how you'd go about having the tapes, for lack of  
20 a better term, decoded or formatted in such a way  
21 that they could play on a normal VCR?

22 A. Well, I knew that they had to be -- you had  
23 to get a regular VCR and tape it off of the time  
24 lapse VCR while it was playing in its time lapse

1 mode, and that's what you would have to do to make a  
2 copy of the tape.

3 Q. Right. But to make it so that it's visible  
4 on a regular VCR without having to schlep, for lack  
5 of a better term, to go to this armored motor place  
6 and look at it there?

7 A. That's what you would have to do, is to copy  
8 it off of the time lapse VCR, and that's the only  
9 way you'd be able to record a certain segment of it.  
10 First you'd have to pull down a certain screen you'd  
11 want, play it and then tape off of that VCR that's  
12 being played.

13 Q. Let me ask you this. Did the D.A.'s office  
14 have at its disposal at this time any facility or  
15 any technology that could have taken a copy of those  
16 videotapes and formatted them in such a way that  
17 they could be played on a regular VCR?

18 MS. ROMANTZ: Objection.

19 A. At that time I don't think the D.A.'s office  
20 had anything that could either play them or record  
21 them. If they had, then Mr. Ardito would have met  
22 with Chris at New Bedford to watch the tapes instead  
23 of us having to go to the security facility.

24 Q. Are you aware that at some point the tapes

1 were sent out to REACT in Raynham?

2 A. I am not.

3 Q. Have you ever worked with REACT?

4 A. No, I have not.

5 Q. What was the last scene you saw on the  
6 videotapes on that day when you were viewing them?

7 A. I don't recall. It may have been when they  
8 were outside in the parking lot and then they came  
9 back inside or she came back inside.

10 Q. On that day did you have any understanding  
11 as to whether or not there were any civil claims  
12 against AMSA?

13 A. I knew nothing. I wasn't -- I knew -- I  
14 wasn't even sure if the defendant was indicted  
15 regarding this case.

16 Q. Did Mr. Ardito make any remark that the  
17 company was being sued or was going to be sued or  
18 there were claims against the company of any kind?

19 A. No.

20 Q. Did the security official that you met with,  
21 did he make any reference to that?

22 A. Not that I recall.

23 Q. Now, in terms of the room itself, if you  
24 could describe for me -- strike. Were you and Mr.

1 A. Actually I believe he was on my right.

2 Q. And when you were taking notes, you were  
3 doing it off of your lap?

4 A. Right.

5 Q. Mr. Ardito was doing the same thing?

6 A. I believe so.

7 Q. Where was the security guy standing?

8 A. Straight ahead.

9 Q. So his back was to you?

10 A. He was more turned at an angle facing us,  
11 and then he would put a tape in and he would kind of  
12 face us again while we were watching the tapes. So  
13 he could also watch the tapes while the three of us  
14 -- well, the three of us were all watching the  
15 tapes. So that way he could get an angle at it  
16 also. If he didn't feel this was something specific  
17 to the alleged incident, he would either try a  
18 different frame or try a different tape. So he was  
19 standing if I remember right most of the time.

20 Q. And you kept all the tapes and you were  
21 handing them off to him one by one?

22 A. I don't recall if I just put them down and  
23 he kept trying or if I handed him one by one. I  
24 don't recall.



1 Q. Put them down where?

2 A. Either on the shelf or on the floor. I  
3 don't recall.

4 Q. Now, when he would take the tapes out, what  
5 would he do with them?

6 A. He'd put them in the VCR.

7 Q. When he took the tapes out of the VCR, what  
8 would he do with them?

9 A. I don't recall. He either gave them to me  
10 or he put them down somewhere on the table or some  
11 box or something like that on the shelf.

12 Q. Where was the table?

13 A. I don't recall there being a table. I just  
14 don't know what he did with the tapes afterwards.

15 Q. Where was the shelf?

16 A. The units that house all the VCRs?

17 Q. Yes.

18 A. Perhaps there was space there. I really  
19 don't recall what happened to the tapes.

20 Q. After you stopped watching the tapes, what  
21 did you then do at the facility?

22 A. We basically just shook hands and left.

23 Q. Who's "we"?

24 A. Mr. Ardito, I and the security consultant,

1 and then we left the facility.

2 Q. Did you use the facilities, get a soda?

3 A. No.

4 Q. Play with the police cars? No. Okay.

5 And did you and Mr. Ardito leave the  
6 building together?

7 A. Yes.

8 Q. Did the security person leave with you?

9 A. No.

10 Q. Did he walk you to the door?

11 A. I don't recall.

12 Q. Were you required to sign out or check out  
13 or go through any kind of protocol?

14 A. You didn't have to sign out or check out. I  
15 don't recall that. But you had to be buzzed out or  
16 the door would not open.

17 Q. Who buzzed you out?

18 A. I don't know.

19 Q. And were you and Mr. Ardito talking during  
20 this time period?

21 A. Yes.

22 Q. And what were you talking about?

23 A. I don't recall.

24 Q. Were you talking about what you saw on the

1 comings and goings at that time?

2 A. No.

3 Q. The entranceway where you would have entered  
4 into the D.A.'s office at that time, was it under  
5 video surveillance?

6 A. No.

7 Q. Did you bring the tapes back?

8 A. I don't recall. I think I did, but maybe I  
9 didn't. Like I said, the only reason I would have  
10 left the tapes there would be to copy them. But I  
11 still don't see myself doing that.

12 Q. Was there any discussion about AMSA making  
13 copies of the tapes for you?

14 A. I don't remember, that's the thing.

15 Q. Was there any discussion about AMSA saying,  
16 you know, we'll get these tapes formatted for you in  
17 such a way so you can play them on a normal VCR or  
18 something along those lines?

19 A. I don't remember. I don't know. I just  
20 remember leaving. I would think that I had the  
21 tapes. But it was so long ago, I just have no idea.

22 Q. Well, in sitting in the office and viewing  
23 the tapes, did you have any understanding as to,  
24 especially with regard to the comment "I'm not going

1 A. Yeah.

2 Q. There was no discussion between you and the  
3 security person that day concerning whether or not  
4 they could do it for you?

5 A. I don't recall.

6 Q. Because you weren't aware of any technology  
7 available to the D.A.'s office that could do it?

8 A. Right.

9 Q. If that technology had been available, would  
10 you needed to have to go to AMSA that day?

11 MS. ROMANTZ: Objection.

12 A. I don't think so, no.

13 Q. Now, you say you would have brought them  
14 back to Mr. Saunders' office?

15 A. Correct.

16 Q. Any reason why you wouldn't have brought  
17 them back to Mr. Markey's office?

18 A. His office is in New Bedford.

19 Q. And you say that if you did bring them back,  
20 you would have left them on his desk?

21 A. Or -- he also had a bookshelf I remember in  
22 his office. So either on his desk or in his office.

23 Q. After you viewed the tapes, did you see Mr.  
24 Saunders that day?

1 A. I don't recall.

2 Q. Did you see Mr. Saunders' secretary that  
3 day?

4 A. We all had the same secretaries.

5 Q. So did you see her?

6 A. I don't recall.

7 Q. What was her name?

8 A. Well, there was a Janice who was in charge  
9 of our victim witness advocates, and she was the  
10 only. And then we had a Julie. Julie George who  
11 was basically the person who handled a lot of the  
12 phone calls, stuff like that.

13 Q. Was Julie the one who wrote the Post-it note  
14 that's marked on Exhibit 1?

15 A. Yes, I think she was.

16 Q. Okay. Thanks. If I understand you  
17 correctly, you don't recall if you spoke to Mr.  
18 Saunders that day?

19 A. I don't recall.

20 Q. When was the first time you spoke to Mr.  
21 Saunders concerning your viewing the videotapes at  
22 AMSA?

23 A. I'm not sure when it was. I just basically  
24 told him -- I know at one point after I viewed them,

1 It states Original Message?

2 A. Correct.

3 Q. Is that an e-mail from you?

4 A. Yes, it appears that way.

5 Q. Can you tell me what the initials BRI mean?

6 A. That simply means Bristol, Bristol County.

7 Q. It states, "Ms. Veenstra, check out the  
8 Attleboro file. I think I had written a memo about  
9 my visit." Is the written memo that you referred to  
10 the document marked as Exhibit No. 1?

11 A. I think so.

12 Q. Any other memorandum?

13 A. I don't think I would --

14 Q. It says "Let me know." And then the next  
15 sentence. "I also know that the facility still has  
16 tapes of the incident." Did I read that correctly?

17 A. Um-hmm. Yes, you did.

18 Q. How did you know they did?

19 A. Must have been to my memory at that time.

20 Q. In June of 2002?

21 A. Yes.

22 Q. When you left the facility that day, did  
23 they tell you they still had tapes or copies of the  
24 tapes?

1 A. No. Like I said, even at that time in --  
2 when I first learned that the tapes were missing, I  
3 had no idea. Me saying that, "I also know that the  
4 facility still has tapes about the incident," I'm  
5 not sure what that's pertaining to. But like I  
6 said, I don't remember ever specifically if I left  
7 with the tapes, left some tapes there. I just don't  
8 know.

9 Q. But you wouldn't have made the  
10 representation that the facility still had tapes  
11 unless you believed it was true?

12 MS. ROMANTZ: Objection.

13 A. Correct.

14 Q. Now, at this time were you in New Bedford,  
15 that's where you were working at the time in June of  
16 2002?

17 A. Yes.

18 Q. Was Mr. Saunders working in New Bedford at  
19 that time?

20 A. I'm not sure. I know he was in Attleboro  
21 for a period of time after I left, and then  
22 ultimately he did go to New Bedford District Court,  
23 but I'm not sure when.

24 Q. And how about Mr. Markey, was he in New

1 Q. Other than your conversation with Mr. Ardito  
2 on that day, did you have any discussions with Mr.  
3 Ardito concerning this case after that day?

4 A. No.

5 Q. Do you recall ever having any discussions  
6 with Mr. Ardito in court where you asked him didn't  
7 you see me leave with the tapes or anything like  
8 that?

9 A. I'm sure I asked him, and he didn't  
10 remember.

11 Q. Do you recall when that was?

12 A. Actually when I first heard of this, I  
13 probably called him up at his office, and I remember  
14 having a conversation with him about the tapes if I  
15 remembered, and he had no idea either. It was too  
16 long ago.

17 Q. So he couldn't tell you whether or not you  
18 left with the tapes or not?

19 A. Yeah. He doesn't remember whether I had the  
20 tapes in my hand, in my briefcase or if I left them  
21 there. He had no idea.

22 Q. You had a briefcase with you that day?

23 A. Yes.

24 Q. Was it a rinky-dink briefcase like the one



1 I've got here or was it expandable and could hold  
2 lots and lots of things?

3 A. It was a leather briefcase, black leather  
4 briefcase. Nothing -- it wasn't expandable to a  
5 huge point.

6 Q. When you arrived at AMSA, you didn't have  
7 the tapes in a briefcase?

8 MS. ROMANTZ: Objection.

9 A. I don't think I did, no.

10 Q. Did you bring your briefcase in with you?

11 A. I think I did.

12 Q. And did you have it with you in the office?

13 A. Yes. I wouldn't have left it.

14 Q. And when you were in the video room, did you  
15 have it with you there?

16 A. Yes.

17 Q. Where would it have been?

18 A. It would have been either to my right or to  
19 my left.

20 Q. If Mr. Ardito was on your right, would it  
21 have been in between you?

22 A. I don't recall.

23 Q. Was it in between you?

24 A. I don't recall.

1 around her body?

2 A. Yes.

3 Q. And did you see where his right hand was?  
4 Was it placed somewhere on I guess that would be on  
5 the right side of her body?

6 A. It wasn't actually touching from what I  
7 remember. It was almost like guiding somebody  
8 through. Okay.

9 Q. The hand wasn't actually touching or the  
10 whole arm wasn't touching?

11 A. The whole arm wasn't touching nor the hand.  
12 It was basically guiding somebody through a hallway.

13 Q. If Heather Kiernan described that walk down  
14 the hallway as her being dragged by Mr. Ciambriello,  
15 would you agree with that characterization?

16 A. No.

17 Q. And again, it was from the back so you  
18 couldn't see any facial expressions?

19 A. Correct.

20 Q. And you said that you heard a voice say,  
21 "I'm not going in there." Was that exactly the  
22 words that you heard?

23 A. "I'm not going," yes.

24 Q. "I'm not going in there"?

1 A. Correct.

2 Q. Are you positive it was I'm not going in  
3 there as opposed to I'm not going in there now let's  
4 say?

5 MR. MCLEOD: Objection.

6 A. No. From what I recall, it was definitely  
7 "I'm not going in there."

8 Q. And what was the response?

9 A. I did not hear any response from what I  
10 remember.

11 Q. Was there a response?

12 A. I don't think so.

13 Q. I guess what I'm trying to figure out is.  
14 Was that the only statement that was made or was  
15 that simply a statement that somehow you were able  
16 to hear but there was other communication between  
17 the two of them that wasn't being picked up on the  
18 audio?

19 A. It's really tough to say because the audio  
20 was so bad. I heard that statement because it was  
21 directly under the camera and it picked up that  
22 statement as clear as a bell. Whether there was  
23 something that was said at a point further from the  
24 camera, there may have been. I did not hear it on

1 the tape.

2 Q. And do you recall having a conversation with  
3 David Ardito and the security consultant who was  
4 there, you know, along the lines of did you hear  
5 that?

6 A. Yeah.

7 Q. And was there acknowledgment on the part of  
8 Mr. Ardito confirming that he also heard that?

9 A. Yes.

10 Q. And what about from the security consultant?

11 A. I'm not sure. There may have been.

12 Q. Did you rewind the tape and listen to it  
13 again just to confirm that you heard it correctly?

14 A. I think we did.

15 Q. Do you recall how many times you listened to  
16 it or rebacked up for that portion?

17 A. No more than once or twice.

18 Q. And as you sit here today, you have a clear  
19 recollection that Mr. Ardito agreed with some  
20 statement that you made summarizing what it was that  
21 Heather Kiernan said --

22 A. Yes.

23 Q. -- or what -- it was a female voice?

24 A. Correct.

1 Knowing that they would be evidence in a criminal  
2 matter, would it be your normal procedure to leave  
3 that evidence somewhere, for use of a better word,  
4 the chain of custody would be broken?

5 MR. MCLEOD: Objection.

6 A. Normally, no. Like I said, the only thing  
7 that was different in this case is that at the time  
8 we didn't have the capabilities of taping it. The  
9 only reason I would have left the tapes there was  
10 for them to make a copy of the tapes, something that  
11 we could view.

12 Q. If you left the tapes there meaning so that  
13 AMSA could make copies of the tapes?

14 A. Correct.

15 Q. Would there be any way if you left them  
16 there to prevent AMSA or somebody who got ahold of  
17 them from altering the tapes in any way?

18 MR. MCLEOD: Objection.

19 A. If I had left them there?

20 Q. Yes.

21 A. I'm sure anybody could do anything with  
22 them.

23 Q. Or erase them?

24 A. Correct.

1 A. I believe so of this significance, right.

2 Q. At the time you took the tapes to AMSA, did  
3 you have any understanding as to how the D.A.'s  
4 office had gotten in possession of the tapes?

5 A. No.

6 Q. Were you aware of whether a receipt had been  
7 issued by anyone to AMSA for those tapes?

8 A. No.

9 Q. You have no idea whether or not those tapes  
10 were voluntarily turned over without a subpoena?

11 A. No.

12 Q. In directing your attention to what was  
13 marked as Exhibit 2. This is an e-mail that was  
14 drafted, it appears to be drafted by you on Monday,  
15 June 17th, 2002.

16 A. Correct.

17 Q. Do you have any reason to dispute that date?

18 A. No.

19 Q. It appears to be a true copy of your e-mail?

20 A. Could be, yes.

21 Q. And here we are sitting in June of 2005,  
22 three years later?

23 A. Correct.

24 Q. Would it be fair to say that your memory in

1 June of 2002 was fresher than it is now?

2 A. Sure.

3 Q. Yes?

4 A. Yes.

5 Q. And I believe I asked you this before. When  
6 you say "I also know that the facility still have  
7 tapes of the incident," you base that on knowledge  
8 that you had at the time?

9 A. Correct.

10 Q. Other than what you've testified that Mr.  
11 Ardito mentioned about the tapes, did he say  
12 anything else about what he was viewing on the tapes  
13 during that viewing?

14 A. Nothing that I recall out of the ordinary.  
15 Just basically what we were viewing, and making sure  
16 that we both saw the same things.

17 Q. I know in your notes that are marked as  
18 Exhibit 1 you didn't mention that the defendant's  
19 sidearm was not in a holster, that it was tucked in  
20 his pants.

21 A. Um-hmm.

22 Q. Is there any reason why that wasn't noted?

23 A. No.

24 Q. And you said it was in his left side?

1 On the bottom of the page it says CTS. Do you know  
2 what CTS refers to? I'm referring to Exhibit 2.

3 A. I do not. I did not write that.

4 Q. And ATDC, do you know what that means?

5 A. No, I do not.

6 Q. Okay. Thanks. I have nothing further.

7 (Whereupon, at 12:08 p.m., the  
8 deposition of Christopher Abreu adjourned.)  
9  
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## E R R A T A S H E E T

I, CHRISTOPHR ABREU, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that it is a true and accurate record of my testimony (with the exception of the corrections listed below):

Page	Line	Correction
_____	_____	_____
_____	_____	_____
_____	_____	_____
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Signed under the pains and penalties of perjury this  
\_\_\_\_ day of \_\_\_\_\_, 2005

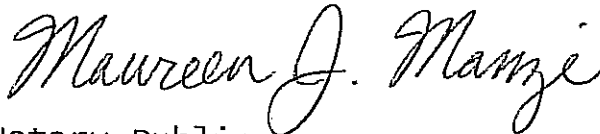
\_\_\_\_\_  
CHRISTOPHER ABREU

1 COMMONWEALTH OF MASSACHUSETTS

2 MIDDLESEX, ss.

3 I, Maureen J. Manzi, Certified Shorthand  
4 Reporter and Notary Public, CSR #135093, duly  
5 commissioned and qualified in and for the  
6 Commonwealth of Massachusetts, do hereby certify  
7 that there came before me on the 2nd day of June,  
8 2005 the person hereinbefore named, who was by me  
9 duly sworn to testify to the truth and nothing but  
10 the truth of their knowledge touching and concerning  
11 the matters in controversy in this cause; that they  
12 were thereupon examined upon their oath, and their  
13 examination reduced to typewriting under my  
14 direction and that the deposition is a true record  
15 of the testimony given by the deponent.

16 In Witness Whereof, I have hereunto set my  
17 hand and affixed my seal this 17th day of June,  
18 2005.

19  
20  
21 

22 Notary Public

23 My Commission Expires:

24 January 17, 2008

**CERTIFIED ORIGINAL  
LEGALINK BOSTON**

# Exhibit E

04/07/2005

1

Volume: I

Pages: 1-182

Exhibits: 1-5

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

----- x  
HEATHER KIERNAN,

Plaintiff,

v.

CA No. 10131MLW

ARMORED MOTOR SERVICES OF AMERICA, INC.

And FRANCESCO CIAMBRIELLO,

Defendants.  
----- x

DEPOSITION OF FRANCESCO CIAMBRIELLO

Thursday, April 7, 2005

10:00 a.m.

McLeod Law Offices, P.C.

77 Franklin Street

Boston, Massachusetts 02110

Reporter: Carol A. Pagliaro, CSR/RPR/RMR

CERTIFIED ORIGINAL  
LEGALINK BOSTON

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Francesco Ciambriello

04/07/2005

## I N D E X

3

EXAMINATION OF:

PAGE

FRANCESCO CIAMBRIELLO

By Atty. McLeod

4

## E X H I B I T S

NO.

PAGE

1 Copy of the application submitted to

AMSA

40

2 Introductory Period Memo

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3 Smoking Policy

53

4 Sexual Harassment Policy

56

5 Attleboro Police Department Statement

of Rights

155

\*Original exhibits attached to original  
transcript.

## P R O C E E D I N G S

## Stipulation

It is stipulated by and between counsel for the respective parties that Motions to strike and objections, except those as to form, are reserved until the time of trial. It is further stipulated that the witness may sign the deposition under the pains and penalties of perjury, rather than before a notary public, within 30 days of receipt by his attorney.

## FRANCESCO CIAMBRIELLO

a witness called for examination by counsel for the Plaintiff, being first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY ATTY. MCLEOD:

Q. Could state your name for the record, please?

A. Francesco Ciambriello.

Q. And because I have seen it spelled differently, and it could be my fault, too, could you please spell your first name for me?

A. The first name is F R A N C -- S C E -- S O -- C O, something like...

1 husband?

2 A. To me, yes. And she said she wasn't happy  
3 and he never make her happy.

4 Q. Anything else?

5 A. And she want a divorce, and she goes over to  
6 Jason Khoury, tell him all the time she want a  
7 divorce.

8 Q. She did, she told Jason Khoury she wanted a  
9 divorce?

10 A. She wanted a divorce because she no happy,  
11 husband no take care of her.

12 Q. Was there anything else that she discussed  
13 with you about her marriage?

14 A. Yes.

15 Q. What else?

16 A. He watch porn all the time and then he jerk  
17 off.

18 Q. So she talked about him watching pornography  
19 and masturbating?

20 A. Yes, and he no pay attention to her.

21 Q. Did she ever talk about her son?

22 A. Yes.

23 Q. What did she say about him?

24 A. She asked me a couple of times if she has a



1 divorce if she can take the baby.

2 Q. Anything else?

3 A. She tell me she smoke pot, you know.

4 Q. Was there anything else that Heather  
5 discussed about her personal life with you?

6 A. No.

7 Q. Did you know how old her son was?

8 A. No.

9 Q. Did she talk about anything about her  
10 husband not working?

11 A. Yes.

12 Q. What did she say about that?

13 A. She said her husband he doesn't have a job,  
14 he no work, he is home all the time, he is a lazy  
15 bum, he can't find a job.

16 Q. Did she say anything about why she was  
17 working?

18 A. No.

19 Q. Did she ever say anything about what it was  
20 like to have a baby?

21 A. No, no.

22 Q. Did you two ever have any physical contact  
23 prior to May 19, 2001?

24 A. Physical contact, yes.

1 Q. And you reached around the front?

2 A. Yes.

3 Q. And then what happened?

4 A. She say, Keep going, I'm feeling good. I  
5 said, what do you mean keep going? She say, You  
6 know what you are doing.

7 Q. Was she breathing heavier?

8 A. Huh?

9 Q. Was her breathing heavier?

10 A. Normal.

11 Q. Did she attempt to pull away from you?

12 A. No.

13 Q. And she said keep going?

14 A. Yes.

15 Q. And what was the next thing that happened?

16 A. We decide to go to -- get up, go to Jason's  
17 office. We walk through the hallway, and went in --

18 Q. Stop right there. I'll go back to that, but  
19 when you say we decided, what do you mean?

20 A. We both decide.

21 Q. How was the decision made?

22 A. Excuse me?

23 Q. How was the decision made?

24 A. We go to Jason's office.

1 Q. Who suggested it?

2 A. We both said same time.

3 Q. So you both decided to go into Jason's  
4 office?

5 A. Yes.

6 Q. You both said it at the same time?

7 A. Yes.

8 Q. Were you both looking at each other when you  
9 said it?

10 A. Yes, yes, we said we go to Jason's office.

11 Q. Now let me ask you this, the video room,  
12 that's where all the video equipment is that has the  
13 tapes of the surveillance?

14 A. Where?

15 Q. I don't know, that's what I'm asking you.

16 A. One more time. I don't catch you; you go  
17 too fast.

18 Q. I'm sorry. The video room, was there a room  
19 that had the video equipment that had the tapes of  
20 the surveillance of, like, the outside and the  
21 garage?

22 A. Mm-mm.

23 Q. There was?

24 A. There was a separate room.

1 Q. The exterior cameras, did they move at all?

2 A. I don't know. I don't know.

3 Q. As part of your responsibilities as weekend  
4 supervisor, you wouldn't be monitoring the videos of  
5 the surveillance, would you, or would you?

6 A. Excuse me?

7 Q. Sorry. I'll strike it. As part of your  
8 duties would you be monitoring what was coming in on  
9 the security cameras? Would you be monitoring --  
10 looking at videos, a TV that had the video of the --

11 A. You mean look at the screen?

12 Q. Yes.

13 A. Yes.

14 Q. Was that a split screen or was it one area?

15 A. One area, just outside. Just outside the  
16 building you can look. That's it.

17 Q. How many cameras were in the room that you  
18 and Heather were in?

19 A. I think 2, 3.

20 ATTY. ROMANTZ: Objection.

21 Q. Sorry, you said two or three?

22 A. At least 2, 3 camera.

23 Q. So while you were rubbing her shoulders and  
24 her back, you knew at least 2 or 3 cameras were

1 looking at you?

2 ATTY. ROMANTZ: Objection.

3 A. Yes.

4 Q. That didn't bother you?

5 A. No.

6 Q. And when you were rubbing her breasts over  
7 her shirt, the fact that you were being videotaped  
8 didn't bother you?

9 ATTY. ROMANTZ: Objection.

10 A. No.

11 Q. At that time you were married, correct?

12 A. Yes.

13 Q. Were you wearing a wedding band at the time?

14 A. Yes.

15 Q. And can I ask you, please, why you were  
16 rubbing the breasts, over her shirt, of an employee  
17 while you were a weekend supervisor as a married  
18 man? Why were you doing that?

19 ATTY. ROMANTZ: Objection.

20 A. She asked me to do it.

21 Q. And you didn't refuse?

22 A. No.

23 Q. And the fact you are a married man didn't  
24 factor into your decision-making process at all?

1 A. Jason's office.

2 Q. Where was she when she said that?

3 A. When we get up.

4 Q. In the office, in that check counter room?

5 A. Check-in counter.

6 Q. But you had testified you had both said at  
7 the same time --

8 A. Yes, yes.

9 Q. -- you had both said at the same time,  
10 Let's go into Jason's office?

11 A. Yes.

12 Q. So was it before or after that that she  
13 said, Not right now?

14 A. First we say we go to Jason's office.

15 Q. You both do?

16 A. We both do, so we said that, and then after  
17 a second she say, Oh, no right now, and then she  
18 changed her mind again.

19 Q. How much time had elapsed before her saying  
20 no right now and her, as you have testified,  
21 changing her mind?

22 A. Maybe in a minute.

23 Q. Did she do anything during that minute; was  
24 she working, doing anything?

1 A. No, we didn't do nothing. It was nothing.  
2 We just sit down and do nothing. We get up, we  
3 supposed to go, then she said, No right now, then  
4 she change her mind, we go in. That's how it  
5 happening.

6 Q. Then so you unlocked --

7 A. -- the door.

8 Q. -- Jason's office?

9 A. -- office.

10 Q. And the keys, did you keep them in your  
11 pocket or was it like on a key belt thing?

12 A. Like it was in a key ring.

13 Q. That was on the belt? Was it on like your  
14 belt or by the --

15 A. Snap.

16 Q. Snap. Those are the company keys?

17 A. Yes.

18 Q. And what hand -- did you use both hands to  
19 unlock the door?

20 A. I use right hand unlock the door.

21 Q. Where was your left hand?

22 A. My hand was somewhere on myself.

23 Q. So did you take it off of Heather Kiernan?

24 A. I only had one hands on Heather Kiernan all

1 Q. Did you not think that was inappropriate?

2 ATTY. ROMANTZ: Objection.

3 A. No.

4 Q. Why not?

5 A. Because she was no happy home. Her husband  
6 no made her happy. She always was upset. She  
7 didn't want to be with her husband, so I no have no  
8 problem. Also it wasn't just my idea, it was both  
9 my idea.

10 Q. So you were talking about your own sexual  
11 experiences as well?

12 A. No, I never talk. No, no, no.

13 Q. You weren't talking about your marital  
14 sexual issues or experiences, were you --

15 ATTY. ROMANTZ: Objection.

16 A. No.

17 Q. -- with Heather.

18 You say that you read Exhibit 3 --  
19 sorry, Exhibit 4, and if I could direct your  
20 attention towards the bottom of the page where it  
21 says Confidential, although there is this certain --  
22 it's this one -- there is a number of bulleted  
23 points, and I'm just directing you beginning where  
24 it says, while; while it is not possible to list all



1 of those circumstances which constitute sexual  
2 harassment, the following are some examples, and  
3 then it lists several examples, and the one example,  
4 the one that is second from the bottom, is  
5 discussion of one's sexual activities; do you see  
6 that?

7 A. Yes.

8 Q. So it was your testimony that Heather was  
9 discussing her sexual activities about her husband,  
10 right?

11 ATTY. ROMANTZ: Objection.

12 A. Correct.

13 Q. And you, when she was having these  
14 discussions with you, you were acting as her  
15 supervisor, correct?

16 ATTY. ROMANTZ: Objection.

17 A. Yes.

18 Q. And yet you took no action at all to suggest  
19 that her discussions violated that policy that you  
20 signed off that is marked as Exhibit 4?

21 ATTY. ROMANTZ: Objection.

22 A. I think, I'm no remember too sure, but a  
23 couple of times I spoke to my night supervisor, his  
24 name Chris, I don't know his last name, to talk to

1 Jason, because Heather, she had a mouth full.

2 Q. I don't know what you mean by mouth full.

3 A. She was tell all these things, that's mean a  
4 mouthful, to me, yes.

5 Q. When did you have that discussion?

6 A. That was about 2, 3 weeks before it  
7 happened, a couple of weeks before it happened.

8 Q. What prompted you to have that discussion?

9 A. I don't understand that.

10 Q. Why did you talk to Chris about him talking  
11 to Jason about Heather's behavior and what she was  
12 talking about?

13 A. Why I talk to Jason? Because it was not  
14 right for me at one certain point to hear all this  
15 stuff.

16 ATTY. MCLEOD: Could you read that  
17 answer back, please.

18 (Answer read.)

19 Q. So you spoke to Chris, he was your  
20 supervisor during the week, and you asked him to  
21 speak to Jason?

22 A. Yes.

23 Q. Do you know if he did?

24 A. Well, I don't have no idea.

1 Q. But, nevertheless, at that time you were  
2 concerned about the things Heather was talking  
3 about?

4 ATTY. ROMANTZ: Objection.

5 A. No really; I was no concern about it.

6 Q. Okay.

7 A. I was no concern about it. You know, I  
8 figure we were friends and she needed somebody to  
9 talk. That's what I assume.

10 Q. I'm confused then. If you weren't concerned  
11 about it, then why did you report it to Chris?

12 A. (No verbal response.)

13 Q. Sorry.

14 A. I no was concern. I just tell Chris to --  
15 you know, what mouth she had.

16 Q. But why did you tell Chris is my question.  
17 That's what I'm trying to get to.

18 A. why?

19 Q. Mm-mm.

20 A. I don't know about why I tell him.

21 Q. You don't know why?

22 A. No.

23 Q. But you weren't concerned?

24 A. No.

1 Q. But did you want it to stop?

2 A. Yes.

3 Q. You did?

4 A. Yes.

5 Q. Is that why you went to Chris to talk to him  
6 about it, because you wanted it to stop?

7 A. No, I wanted Heather have a little bit of  
8 clean mouth.

9 Q. You wanted her to stop talking about her  
10 husband?

11 A. Yes.

12 Q. Was there anything else that you wanted  
13 Heather to stop doing which is why you went to  
14 Chris?

15 A. That's the only reason I went to Chris.

16 Q. Because you wanted her to stop talking about  
17 her husband?

18 A. Yes.

19 Q. Was it about her husband in general or was  
20 it just about the sexual things that she was talking  
21 about with you that you wanted to stop?

22 A. In general.

23 Q. In general. You wanted her to stop in  
24 general talking about her husband. So if she came

1 in and said something fairly innocent about her  
2 husband, such as my husband bought me this sweater,  
3 that is not something you cared to hear about?

4 A. No, that's a different story with the  
5 sweater with other activity going on. That like --

6 Q. What I had ask you was, Did you want her to  
7 stop talking about her husband in general or just  
8 stop talking about her husband with regard to his  
9 sexual activities, and your response was in general.

10 A. Yes, meaning general what?

11 Q. Anything, or just one issue, the sexual  
12 activity such as before we were talking --

13 A. No, in general. I don't want to hear her  
14 outside problem.

15 Q. On that morning -- not that morning, but on  
16 that day, May 19, when she came into the office --  
17 when she came into AMSA, did she have anything to  
18 say about her husband?

19 A. Yes. She say he was an asshole, all of this  
20 stuff, nothing really new, same record over and over  
21 again.

22 Q. And that came approximately a couple of  
23 weeks after you had talked to Chris hoping that  
24 would stop, right?

1 A. Yes.

2 Q. How did you feel about that?

3 A. How did I feel about that?

4 Q. Mm-mm.

5 A. If I told him something once, I'd have to  
6 tell him again.

7 Q. Before Heather arrived that day did you have  
8 any knowledge as to whether or not Chris had spoken  
9 to Heather or Jason -- let me finish -- or whether  
10 or not Jason spoke to Heather about what you had  
11 spoken to Chris about?

12 ATTY. ROMANTZ: Objection.

13 A. I never heard anything.

14 Q. Did you ever meet Heather's husband?

15 A. No.

16 Q. Did you form any opinions about Heather's  
17 husband?

18 A. No.

19 Q. So let me ask, Did you think that Heather's  
20 comments about her husband weren't appropriate for  
21 the workplace?

22 A. Yes.

23 Q. You didn't think they were appropriate?

24 A. Yes, you could say that.

1 activity. There was her and me; both were. She  
2 want to do that, she want to be -- I assume, I  
3 understand, probably she started the shoulder for go  
4 some other place.

5 Q. And as I recall, because as you are  
6 testifying, she wanted to go in that room with you,  
7 right?

8 A. Yes.

9 Q. And at no time did she say to you I don't  
10 want to go in there?

11 ATTY. ROMANTZ: Objection.

12 A. No.

13 Q. If she had said to you, I don't want to go  
14 in there, would it have been appropriate for you to  
15 go into that room with her?

16 ATTY. ROMANTZ: Objection.

17 A. No.

18 Q. When you are at AMSA you can't smoke inside?

19 A. Some people smoke in the garage, the break  
20 room, some people they go outside. It depends.

21 Q. But if you were to go outside the building  
22 you need to secure the vault; is that what you need  
23 to do?

24 A. The vault is already secure. The part of

1 A. No.

2 ATTY. MCLEOD: I don't have any other  
3 questions at this time. Based on the issues with  
4 the joint defense agreement that has just been  
5 raised, I will suspend, in the event that I'm able  
6 to get further inquiry on the meeting that took  
7 place yesterday, but other than that I think we are  
8 done.



C E R T I F I C A T E

I, FRANCESCO CAMBRIELLO, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that said transcript is a true and accurate record of said testimony (with the exception of the following corrections listed below):

Page	Line	Correction/Reason
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signed under the pains and penalties of perjury  
this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
FRANCESCO CAMBRIELLO


1 Commonwealth of Massachusetts

2 Suffolk, ss.

3 I, Carol A. Pagliaro, Registered Professional  
4 Reporter and Notary Public in and for the  
5 Commonwealth of Massachusetts, do hereby certify  
6 that FRANCESCO CAMBRIELLO, the witness whose  
7 deposition is hereinbefore set forth, was duly sworn  
8 by me and that such deposition is a true record of  
9 the testimony given by the witness to the best of my  
10 skill and ability.

11 I further certify that I am neither related to,  
12 nor employed by, any of the parties in or counsel to  
13 this action, nor am I financially interested in the  
14 outcome of this action.

15 In witness whereof, I have hereunto set my hand  
16 and seal this 25th day of April, 2005.

17  
18  
19  
20 

CERTIFIED ORIGINAL  
LEGALINK BOSTON

21 Carol A. Pagliaro, RMR

22 Notary Public

23 CSR No. 123293

24 My commission expires April 28, 2011

# Exhibit F

Volume: 1  
 Pages: 83  
 Exhibits: 3

## COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.  
 No. BRRCR2002-0773

## SUPERIOR COURT

## COMMONWEALTH OF MASSACHUSETTS

vs.

FRANCESCO CIAMBRIELLO

BEFORE: Burnes, J.

Motion to DismissAPPEARANCES:

Jeanne M. Veenstra, Assistant District Attorney,  
 Bristol District, 888 Purchase Street, New Bedford,  
 Massachusetts 02740, for the Commonwealth.

David R. Ardito, Esq., 228 County Street,  
 Attleboro, Massachusetts 02730, for the Defendant.

New Bedford Superior Courthouse  
 New Bedford, Massachusetts  
 August 25, 2003

LORI R. SAULNIER  
 Official Court Reporter  
 Certified Shorthand Reporter

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## P R O C E E D I N G S

THE CLERK: #16 on the list, Francesco  
 Ciambriello with Mr. Ardito, Ms. Veenstra.

THE COURT: Yes. Good morning.

MS. VEENSTRA: Good morning.

MR. ARDITO: Good morning.

THE COURT: Mr. Ardito, this is your  
 motion to dismiss?

MR. ARDITO: Yes, it is, judge.

THE COURT: Do either of you want to be  
 heard in opening? I've read both the motion and  
 the opposition. Do I need to know anything more  
 before you start?

MR. ARDITO: I don't believe so, your  
 Honor.

THE COURT: Okay. Why don't we --

MS. VEENSTRA: Judge, I just suggest I  
 think that, as the Court knows, the balancing  
 test is going to require the Court to determine  
 the culpability of the Commonwealth, and I would  
 expect to elicit some evidence on that. It also  
 needs to determine the potential exculpatory  
 value and the nature of that evidence and the  
 materiality of it. So, I would expect to offer  
 testimony on those two prongs, and then obviously

4

it will be up to the Court to determine what the  
 potential prejudice to the defendant will be; and  
 that obviously will be arguments of counsel.

THE COURT: Right. I also notice, Ms.  
 Veenstra, there is a letter from you to Mr.  
 Ardito in here saying that there were three tapes  
 that were retrieved?

MS. VEENSTRA: Yes, your Honor.

THE COURT: I'd be interested in  
 knowing -- and I'm sure you will elicit this --  
 how many there were to start with, what these  
 tapes covered, what they --

MS. VEENSTRA: Absolutely, your Honor.  
 I think that the number of witnesses will be able  
 to give your Honor the best picture possible of  
 what was depicted, what happened to the tapes,  
 how many there were initially, what happened to  
 them, what the Commonwealth has retained  
 possession of, and what those tapes depicted.

THE COURT: Okay. All right.

MR. ARDITO: Your Honor, may I use the  
 podium?

THE COURT: Yes, certainly.

MR. ARDITO: Your Honor, as stated in  
 my brief, we believe that the lost tapes are

paramount to our defense. Reason being is if you just look quickly -- and I know your Honor hasn't had time, but there's certain things that were elicited in the grand jury indictment were actually shown on those tapes, because I witnessed the tapes with one of counsel's witnesses. For example, Officer Otrando, I believe -- and my sister will probably elicit that -- says that in interviewing one of the witnesses, a Ms. Parrott, Ms. Parrott in her sworn statement says that the client was dragged into the room. It's right in the minutes of the grand jury. I've seen the tape. They walked into the room. We have a copy of that tape of them walking. Officer Otrando says when asked whether or not my client's left hand was free, he says he did not have a good look. We have a tape today, and you can see them both walking down the aisle toward where this alleged incident took place. Well, certainly if a jury was to view the entire tape the way I viewed the tape, it certainly contradicts everything that was mentioned not only in the grand jury indictment, but the police reports.

For example, there's a clear picture --

this is not a contradiction, but it certainly goes to the state of mind. There was a clear picture of the alleged victim standing outside the building smoking a cigarette with a friend that she called up to take her over a bottle of wine. I think that picture in itself -- this is hours later -- sends a message, and I need that message to be shown to a jury.

This is a consent defense. We're saying that they walked down the aisle, went into the room for five minutes, came out. There was a picture of her very clear walking out of that room heading towards the ladies room. I seen it. There was no distress. There was no putting herself together. There was none of that. I need to show that to a jury. That's the whole case. If I was to show this tape to a jury, I probably wouldn't even have to cross-examine witnesses. That's how telling this tape was. And for the Commonwealth not to have the tape today puts us in a terrible position because now we have testimony that's going to be very very hard to cross-examine.

With the tape itself, it clearly shows that if anything at all was done -- and that was

out of the view of the camera. And according to Officer Otrando, he said he timed it. It was about five minutes that they were in this room. It clearly shows that there was no distress, no one was in any pain.

There's another part of the video that shows them having a coke after. Mr. Ciambriello asked Ms. Kiernan if she wanted something to drink. They were in a waiting room. All of this, you know, hours and hours and hours of tape that are missing right now are paramount to our defense. To allow this case to go on without this tape, it certainly prejudices my client.

You know, I don't want to recite case law, in this case what was said or that case. You have that in front of you. But I seen this tape. And from the onset I believe that if I had this tape, there wouldn't have been a problem. Reason why we couldn't get the tape is it was shot over some type of security system where there was several different cameras taking place at the same time, and we needed -- it had to be seen at AMSA the place where the alleged incident took place; and that's where myself and at that time Assistant District Attorney Saunders went to

go view the tape. We only stood there for a couple of hours, and what we saw was enough to let me believe this is paramount. This is what I need to show a jury. This is how my client gets exonerated of these indictments.

The only thing I have today is a five -- two minute walk showing Mr. Ciambriello and the victim walking to the alleged place of the incident, which I'm sure we're going to show your Honor. And even that video contradicts testimony in the grand jury report. Without that video, your Honor, we are extremely prejudiced, extremely prejudiced. It just -- we just need it. It showed other armored personnel coming in. One particular personnel truck was very -- came in after the alleged incident. So, if Ms. Kiernan was really in distress, she was two feet away. The camera showed her two feet away from this armored guard.

THE COURT: Well, I assume that I'm going to hear from him.

MR. ARDITO: You are. You are. But I think the picture itself -- the day of reality TV, the picture itself is what I need a jury to see. That's gone. I mean when I cross-examine

Ms. Kiernan and I asked her hypothetically, you know, why didn't you ask this person for help, I don't know what her answer's going to be. But if I could show that on television, if I could show a jury here's this man, he's armed, here's Ms. Kiernan, there's Mr. Ciambriello, and ask that question then --

THE COURT: Okay. I think you've made a showing --

MR. ARDITO: Thank you, judge.

THE COURT: -- that you need it.

MR. ARDITO: Desperately.

THE COURT: Let's see what the Commonwealth has to show why you don't.

MS. VEENSTRA: The Commonwealth would call Sergeant John Otrando.

THE COURT: Okay.

JOHN OTRANDO, Sworn

THE WITNESS: Morning, your Honor.

DIRECT EXAMINATION

BY MS. VEENSTRA:

Q. Would you please introduce yourself for the record.

A. Yes. My name's John Otrando. I'm a sergeant with the Attleboro Police Department.

THE COURT: You can sit down.

Q. How long have you been with the Attleboro Police Department?

A. Fifteen years.

Q. Sergeant Otrando, I'd like to direct your attention to the year 2001, in the month of May, and ask you whether you began an investigation with regard to an alleged rape at an armored car facility?

A. Yes, I was involved in that.

Q. And what is the name of that facility?

A. It's AMSA, Armored Motor Services of America, I believe.

Q. And directing your attention to the early morning hours of May 20th in the year 2001, did you go to that location in furtherance of your investigation?

A. Yes, I did.

Q. And do you know who you were with or who was present at that location when you went there?

A. Yes. I believe it was Officer Castro, Officer Larsen, and a civilian from AMSA Edward O'Brien. There was also another gentleman there. His name escapes me at this time, from AMSA.

Q. And would that name be contained in your police

report, detective?

A. It may be.

MS. VEENSTRA: Your Honor, may he refresh his memory?

THE COURT: Yes.

THE WITNESS: It may be contained in the initial incident report.

Q. I direct your attention to Page 2 approximately halfway down. A little more than halfway down.

A. Jason Khoury.

Q. And that would be K-H-O-U-R-Y?

A. That's correct.

Q. Did you and other members of your police department have an opportunity to take a look at that facility at that time?

A. Yes, we did.

Q. And did you have an opportunity at that time to view some surveillance equipment?

A. Yes, we did.

Q. As best you can, can you describe the nature of that equipment and that surveillance system for the Court?

A. It's a small room by the manager's room. There are various screens in front of you, monitors, and there's like a VCR type system. I believe it

contains six VCRs. The system they told me was a multiplex tape system where on each screen you would see nine frames, and they informed me that the entire facility was monitored by video camera, and there's also recorded audio.

Q. So, if I understand you correctly, there are a number of screens, and within those screens there are a number of frames?

A. That's correct.

Q. And you said that the entire facility is monitored. Is the entire facility monitored?

A. Everything except for the supervisor's office which was informed to me to be Jason Khoury's office.

Q. And where specifically within AMSA did the alleged rape take place?

A. Inside Jason Khoury's office.

Q. Did you have an opportunity while visiting that facility to view what was depicted on those surveillance tapes?

A. Yes, I did.

Q. Could you describe what you saw to the Court?

A. One portion -- I observed one portion of the tape shows Heather Kiernan and Francesco --

Q. And would that be the alleged victim?

1 A. Yes. The alleged victim Heather Kiernan,  
2 Francesco Ciambriello, and another female  
3 identified later as Christina Parrott outside the  
4 facility, appeared to be smoking cigarettes  
5 outside.

6 THE COURT: All three of them outside?

7 THE WITNESS: All three were outside,  
8 yes.

9 Q. And did you hear any audio, specifically with  
10 regard to what was depicted outside?

11 A. No, I did not.

12 Q. Could you, sergeant, see any facial expressions  
13 on any one of these three people that were  
14 outside?

15 A. No, I could not.

16 Q. Did you make any other observations of what was  
17 depicted on the tapes?

18 A. Yes. There was another section where it showed  
19 Heather Kiernan at her desk, and Francesco  
20 Ciambriello was speaking with her by her desk.  
21 They appeared to be in some sort of  
22 conversation. He was in the room by her desk.

23 Q. And when you said that they appeared to be  
24 involved in some sort of conversation, could you  
25 hear what was said?

1 A. I could not make out what was said, no.

2 Q. And again, were you able to determine any facial  
3 expressions that stood out to you?

4 A. No, I could not.

5 Q. Did you make any other observations of what was  
6 depicted on the tapes?

7 A. Yes. There was another section of the tape where  
8 Francesco Ciambriello was walking side by side  
9 with the victim Heather Kiernan. He was to her  
10 left. He had his right arm around her -- the  
11 waist, buttocks area. His left arm I could not  
12 see where it was. I know it wasn't down by his  
13 side. It was into his right side, and he was  
14 walking along with her through what they told me  
15 was the money room.

16 Q. And you said that his left hand was where?

17 A. His left hand was on the right side of his body.  
18 It wasn't down by his side. It was like this,  
19 but I couldn't see where it was. And his right  
20 hand was around her waist, buttocks area.

21 Q. As best you can, describe the angle of that view  
22 of them walking down the corridor. Would that be  
23 a view of their backs, their sides, their  
24 fronts? Could you describe that to the Court?

25 A. Their left side. I had the view of their left

1 side. If the camera was situated here higher up  
2 on the wall, it was coming down. So, I could see  
3 his left side very clearly, and the tape only  
4 lasted a few seconds.

5 Q. Did you hear any audio in viewing that portion of  
6 the tape?

7 A. No, I did not.

8 Q. At some later time -- and I'll get to that more  
9 completely later, but at some later time did you  
10 have some communication with Edward O'Brien  
11 regarding that audio?

12 A. Yes, I did.

13 Q. Can you describe that to the Court?

14 A. At this time when I viewed the tapes, there was a  
15 humming noise coming from the audio where a lot  
16 of -- there was feedback or whatever you would  
17 call it. So, a lot of the audio was inaudible.  
18 When the tapes were viewed later, I had a chance  
19 to speak with Edward O'Brien who was present at  
20 that second viewing. He informed me that that  
21 feedback or that humming noise was gone and that  
22 he could hear some of the statements that were  
23 made by the victim.

24 Q. Okay. Do you know what he said he heard on that  
25 tape?

1 MR. ARDITO: Objection, your Honor.  
2 Hearsay.

3 THE COURT: Well, I think she can have  
4 it on this for this motion.

5 MR. ARDITO: For the record.

6 Q. Did he tell you what he heard on that tape?

7 A. Yes. He informed me that he could hear Heather  
8 Kiernan state, "No. No. I don't want to go back  
9 there."

10 Q. But you didn't hear that?

11 A. No, I did not.

12 Q. And you were not present at that second viewing;  
13 is that correct?

14 A. That's correct.

15 Q. Now, you said that you saw them coming down the  
16 hallway. Did you see where they went when they  
17 went down the hallway?

18 A. Yes. After they went through the money room,  
19 they went down a longer hallway. They went  
20 through the money room and took a right down a  
21 long hallway. Then I observed them from a  
22 different camera that again was positioned -- say  
23 it was up here. They took a right, and the  
24 camera was at their back leading down to Jason  
25 Khoury the supervisor's office.

1 Q. And what happened once they got to that office?  
2 Did you see --  
3 THE COURT: Let me just interrupt. You  
4 said you were looking at them from the back?  
5 THE WITNESS: Yes, your Honor.  
6 THE COURT: Okay.  
7 Q. Let me ask you while looking at them from the  
8 back, did you make any observations of Mr.  
9 Ciambriello's hands?  
10 A. He had his arm around the victim in the same  
11 manner I mentioned before, the waist, buttocks  
12 area.  
13 Q. What hand would that be?  
14 A. His right hand.  
15 Q. And when you say waist, buttocks area, sir, is it  
16 low on the buttocks, or is it in the waist?  
17 A. It's -- well, I'd say the hip area. Yes, right  
18 around that area. To the back.  
19 Q. And did you see what happened once they got to  
20 that door?  
21 A. I observed them enter the supervisor's office.  
22 Q. Who went in first; do you remember?  
23 A. I believe it was Heather Kiernan.  
24 Q. And did you continue -- did that door close?  
25 A. Yes, it did.

1 Q. Did you continue to watch?  
2 A. Yes, I did.  
3 Q. And at some point did that door open?  
4 A. Yes, it did.  
5 Q. Can you estimate for the Court about how much  
6 time elapsed while that door was closed?  
7 A. I'd have to say several minutes.  
8 Q. And when you say several minutes, five, ten,  
9 fifteen? As best you can estimate.  
10 A. Estimate, five.  
11 Q. And when you see that door open, what else did  
12 you see?  
13 A. I observed Heather Kiernan exit and turn left.  
14 Q. And do you know where she went to?  
15 A. From later speaking with her, she informed me  
16 that she had gone to the female's bathroom.  
17 Q. Did you see her go to the bathroom?  
18 A. No. I just observed her exit and head in that  
19 general direction.  
20 Q. Did you make any observations of her demeanor or  
21 her facial expression as she exited that office?  
22 A. No, I did not.  
23 Q. Was the angle such that you would see the front  
24 of her?  
25 A. Yes.

1 Q. Now, is that, sergeant, basically what you saw  
2 depicted on those tapes that evening initially  
3 starting your investigation?  
4 A. That is correct.  
5 Q. That evening did you seize some video tapes?  
6 A. Yes, I did.  
7 Q. How many video tapes did you seize on May 20th in  
8 the early morning hours?  
9 A. Three.  
10 Q. And were those labeled in any way?  
11 A. Yes, they were.  
12 Q. How were they labeled?  
13 A. D -- the letter D, E, and F.  
14 Q. And at some point did you have some conversation  
15 with an assistant district attorney Christopher  
16 Markey?  
17 A. Yes, I did.  
18 Q. And did some of that conversation revolve around  
19 those video tapes that you seized?  
20 A. Yes.  
21 Q. And were some arrangements made for the viewing  
22 of those video tapes?  
23 A. Yes.  
24 Q. Can you describe what happened to the Court?  
25 A. ADA Markey asked me if he could get those tapes

1 in order to view them to make copies of them to  
2 further the case. So, my recollection is that I  
3 brought them up to New Bedford and dropped them  
4 off to ADA Markey.  
5 Q. And that would be three tapes?  
6 A. Yes.  
7 Q. And at some point did you have some conversation  
8 with Assistant District Attorney Markey to  
9 retrieve other tapes?  
10 A. Yes.  
11 Q. And what other tapes were you asked to retrieve?  
12 A. The three remaining tapes that were left in  
13 AMSA's possession.  
14 Q. And how were those labeled?  
15 A. A, B, and C.  
16 Q. Okay. Do you know if this was before or after  
17 you turned over the original tapes labeled D, E,  
18 and F?  
19 A. I'm not sure.  
20 Q. But you're sure that you gave him tapes D, E, and  
21 F?  
22 A. Yes, I am sure about that.  
23 Q. And you were instructed to go and retrieve A, B,  
24 and C?  
25 A. That is correct. He gave me a subpoena.



1 Q. And did you retrieve A, B, and C?  
 2 A. Yes, I did.  
 3 Q. And do you still retain -- let me ask you this.  
 4 Did A, B, and C ever leave your custody?  
 5 A. No, they did not.  
 6 Q. Well, at some point were they forwarded to the  
 7 Raynham Police Department?  
 8 A. Yes. Correct.  
 9 Q. Okay. Are they -- subsequent are they now back  
 10 in your possession?  
 11 A. Yes, they are.  
 12 Q. Do you know whether there were some arrangements  
 13 made between Assistant District Attorney Markey  
 14 and counsel for the defendant and AMSA to view  
 15 those tapes?  
 16 A. Yes, there were.  
 17 THE COURT: Which tapes are we talking  
 18 about? A, B, and C or D, E, and F?  
 19 MS. VEENSTRA: D, E, and F.  
 20 A. Yes, there were arrangements made.  
 21 Q. And were you present?  
 22 A. No, I was not present.  
 23 Q. Did you ever receive back tapes D, E, and F?  
 24 A. No, I did not.  
 25 Q. I'm going to show you what appears to be a

1 handwritten receipt and ask you if you recognize  
 2 it?  
 3 A. Yes, I do.  
 4 Q. What do you recognize that to be, Sergeant  
 5 Otrando?  
 6 A. I recognize this to be a receipt. I believe it  
 7 was cosigned by Jason Khoury the supervisor at  
 8 AMSA and signed by myself. I signed this the  
 9 second time I went back to pick up Tapes A, B,  
 10 and C, and he indicates on here that I had seized  
 11 Tapes D, E, and F initially.  
 12 MS. VEENSTRA: I'd ask that this be  
 13 marked as an exhibit.  
 14 MR. ARDITO: No objection, your Honor.  
 15 THE COURT: It may be marked.  
 16 (The receipt was marked Exhibit No. 1  
 17 and received into evidence.)  
 18 Q. Now, at some point did you ask an Officer Castro  
 19 of your police department to assist you?  
 20 A. Yes, I did.  
 21 Q. And was he actually one of the responding  
 22 officers in this investigation anyway?  
 23 A. Yes, he was.  
 24 Q. What did you ask Officer Castro to do?  
 25 A. I gave him custody of the tapes and asked him to

1 go to the REACT Organization which is headed by  
 2 Deputy Chief Pacheco of the Raynham Police  
 3 Department so that he may view the tapes, extract  
 4 whatever information was available.  
 5 THE COURT: Which tapes are we talking  
 6 about here?  
 7 THE WITNESS: Those were A, B, and C,  
 8 your Honor.  
 9 THE COURT: All right.  
 10 Q. And does the Raynham Police Department have some  
 11 special equipment with which to view this type of  
 12 evidence?  
 13 A. Yes. It's through REACT.  
 14 MS. VEENSTRA: If I could have one  
 15 moment, your Honor?  
 16 THE COURT: Uh-huh. While you're  
 17 thinking, let me just ask, you have A, B, and C  
 18 now. What you don't have is D, E, and F?  
 19 THE WITNESS: That's correct, your  
 20 Honor.  
 21 MS. VEENSTRA: I have no further  
 22 questions of this witness, your Honor.  
 23 THE COURT: Counsel.  
 24 CROSS EXAMINATION  
 25 BY MR. ARDITO:

1 Q. Detective, did you view A, B, and C?  
 2 A. I viewed the tapes. I can't say specifically if  
 3 it was A, B, and C. From what Edward O'Brien  
 4 informed me, that the views that we saw that day  
 5 were on A, B, and C. They have six VCRs, and  
 6 they're all set up, and he informed me that what  
 7 we were viewing was on A, B, and C. And I  
 8 observed portions of it. I didn't view the whole  
 9 tape from say 3:00 in the afternoon until 11:00,  
 10 but there were portions of A, B, and C I viewed,  
 11 yes.  
 12 Q. And on Tapes A, B, and C, do you recall how many  
 13 hours of tape they were?  
 14 A. No, I do not recall.  
 15 Q. So, there was six tapes total; am I correct?  
 16 A. Yes, sir.  
 17 Q. And the facility outside of the supervisor's  
 18 office was completely surrounded by cameras,  
 19 correct?  
 20 A. I don't know if it's accurate to say it's  
 21 completely surrounded by cameras. Some cameras  
 22 view it like -- I wouldn't say it's completely  
 23 surrounded. There are cameras that, you know,  
 24 can view it. But to say it's completely  
 25 surrounded, I don't believe so.

1 Q. But someone working an eight hour shift would  
 2 constantly be on camera, would they not? Or the  
 3 facility would be on camera?  
 4 A. Yes, yes.  
 5 Q. We have what the police transcribed for us on a  
 6 VCR of Tapes A, B, and C?  
 7 A. Yes.  
 8 Q. Did you view that?  
 9 A. Yes, I did view that.  
 10 Q. And there's less than three minutes on that tape;  
 11 isn't that true?  
 12 A. If you're telling me that. I didn't time it.  
 13 Q. But that tape only shows them walking down a  
 14 room; isn't that true? It shows -- I believe it  
 15 shows the victim talking to someone, and then her  
 16 and Mr. Ciambriello walking down a room; isn't  
 17 that true?  
 18 A. Walking down a hallway, and there's some  
 19 conversation in there, some interaction.  
 20 Q. But that's all that tape shows?  
 21 A. I don't know if they were completely viewed to  
 22 extract everything out of those three tapes. I  
 23 can't say that that's a final product from  
 24 examining all eight hours from all three tapes.  
 25 From whatever portion they viewed, that's on that

1 tape.  
 2 Q. But that's the size of it though? That's all we  
 3 have right now?  
 4 A. Right now, yes.  
 5 THE COURT: Let me just interrupt you.  
 6 Are these tapes labeled by the camera that took  
 7 the tape, that took the image?  
 8 THE WITNESS: No. On each tape -- from  
 9 what I recall, I believe it's a multiplex  
 10 system. So, there's nine cameras on each tape.  
 11 So, I don't know if that means there would be  
 12 fifty some odd cameras.  
 13 THE COURT: I see.  
 14 THE WITNESS: I don't know.  
 15 THE COURT: And the tapes are from the  
 16 six screens on which these nine -- each of which  
 17 has nine images on it; is that right?  
 18 THE WITNESS: Yes. There's six VCRs  
 19 and each VCR shows nine, I believe, different  
 20 cameras.  
 21 THE COURT: Okay. And these tapes are  
 22 the ones that came from the VCR?  
 23 THE WITNESS: Yes.  
 24 THE COURT: And this three minutes or  
 25 whatever that counsel is asking you about, did

1 somebody extract information or extract images  
 2 off these tapes?  
 3 THE WITNESS: Off A, B, and C, yes,  
 4 your Honor.  
 5 THE COURT: Who did that?  
 6 THE WITNESS: That was Deputy Chief  
 7 Pacheco from the Raynham Police Department.  
 8 THE COURT: And do you know what his  
 9 instructions were, what he was to take off the  
 10 tape?  
 11 THE WITNESS: He went there with  
 12 Officer Castro who I gave custody of the tapes  
 13 to, and they were asked to extract whatever they  
 14 could out of the tapes. They spent eight hours  
 15 looking and extracting information. From what  
 16 they imparted to me, they were unable to  
 17 complete -- they weren't able to go through the  
 18 whole eight hour shift, your Honor, from each  
 19 tape. That's a portion of what they have now.  
 20 There's still more work to do which could be  
 21 extracted.  
 22 THE COURT: The extraction was any  
 23 images of either the defendant or Ms. Kiernan?  
 24 THE WITNESS: Yes.  
 25 THE COURT: Okay.

1 Q. I'm sorry, detective. Prior to you seeing this  
 2 tape, you testified earlier and also at the grand  
 3 jury that the first tape was from the back of the  
 4 room; is that correct?  
 5 A. Well, the first tape I saw -- well, which part  
 6 are you asking me about?  
 7 Q. Well, when you investigated the alleged crime  
 8 originally, when you went to answer the first  
 9 tape, you saw -- you testified that it was from  
 10 the back; that the camera was behind; isn't that  
 11 true?  
 12 A. I don't know which position you're asking me  
 13 about. There's one part where they're going down  
 14 the hallway where the camera is from the back.  
 15 Q. That's what you testified to?  
 16 A. Yes.  
 17 Q. Yes, because you knew this was available. This  
 18 new tape wasn't available then?  
 19 A. No, sir, it was not.  
 20 Q. Have you seen this new tape?  
 21 A. Yes, sir, I have.  
 22 Q. And it clearly shows them walking? You have a  
 23 frontal view now, correct?  
 24 A. Yes, sir, you do.  
 25 Q. Was there any dragging in this tape?

1 A. I didn't see any dragging, sir.  
 2 Q. Any pushing?  
 3 A. I didn't see any pushing, no.  
 4 Q. Was there any -- was the alleged victim trying to  
 5 stop at any time?  
 6 A. I didn't observe that.  
 7 Q. You didn't observe that. Is it your testimony  
 8 they're just freely walking down into this room,  
 9 correct?  
 10 A. I wouldn't testify that she was freely brought  
 11 down to the room.  
 12 MR. ARDITO: Your Honor, may I show  
 13 this tape?  
 14 THE COURT: Sure. Do you want it at  
 15 this point, or do you want it when this  
 16 officer -- at this point or when this officer is  
 17 completed? Do you want it now?  
 18 MR. ARDITO: Well, I'd like to have him  
 19 testify to what --  
 20 THE COURT: Okay.  
 21 MS. VEENSTRA: It might be clearer,  
 22 your Honor.  
 23 THE COURT: All right.  
 24 MS. VEENSTRA: I'd ask that this be  
 25 marked as Exhibit 2.

1 THE COURT: Okay.  
 2 (The tape was marked Exhibit No. 2 and  
 3 received into evidence.)  
 4 THE OFFICER: There's no volume on  
 5 this.  
 6 MR. ARDITO: I'm sorry?  
 7 THE OFFICER: There's no volume.  
 8 MR. ARDITO: Actually there was some  
 9 conversation.  
 10 (The tape was played).  
 11 Q. Detective, do you know whose voice that is in the  
 12 background?  
 13 A. No, I do not.  
 14 Q. Do you know who put that soda there?  
 15 A. It appears to be Heather Kiernan in one of the  
 16 voices appears to be her.  
 17 Q. And does it appear that there are more than two  
 18 voices? Who is that?  
 19 A. Heather Kiernan.  
 20 MR. ARDITO: Your Honor, I just -- the  
 21 detectives then do some further work. It's a  
 22 repeat of what was visually depicted, and I'll  
 23 leave that for the Court to view.  
 24 THE COURT: Okay. Did you have  
 25 questions now?

1 MR. ARDITO: Well, I believe this is  
 2 another shot of what took place. You see them  
 3 walking.  
 4 THE COURT: What?  
 5 MR. ARDITO: This is another of the  
 6 stroll down the -- right here. Can you stop  
 7 that? Sorry, judge.  
 8 MS. VEENSTRA: Would you like me to  
 9 rewind it just a little bit?  
 10 THE COURT: Yeah.  
 11 MS. VEENSTRA: It appears to depict  
 12 some shadows and then the two walking down the  
 13 hallway.  
 14 THE COURT: Right. Okay. When they  
 15 get in the frame, if you can stop it there.  
 16 THE OFFICER: Pause?  
 17 THE COURT: Okay. Counsel, you have  
 18 questions?  
 19 MR. ARDITO: Thank you, judge.  
 20 Q. Where is Mr. Ciambriello's left arm in this  
 21 photograph?  
 22 A. By his side.  
 23 Q. Not around her body as you earlier testified?  
 24 A. I had testified that her right hand -- that his  
 25 right arm was around her body.

1 Q. And did you not say that his left arm appeared to  
 2 be around her?  
 3 A. No. I testified that in the shot where they went  
 4 through the money room, that I couldn't see --  
 5 from what I recall of that tape, I couldn't see  
 6 his left hand. So, it would lead me to believe  
 7 that it was towards the right-hand side of his  
 8 body. It wasn't down by his side like it is  
 9 here.  
 10 Q. Clearly it was by his side when they walked in?  
 11 A. That's correct.  
 12 Q. No struggle to your --  
 13 A. No.  
 14 MR. ARDITO: Okay. No further  
 15 questions, judge.  
 16 THE COURT: Okay. Ms. Veenstra.  
 17 REDIRECT EXAMINATION  
 18 BY MS. VEENSTRA:  
 19 Q. Detective Otrando, is this the money room?  
 20 A. No. From my understanding, I may be wrong, but  
 21 the money room is the initial -- I think it was  
 22 just before this, that door that opened. I  
 23 said -- when I spoke about the money room was  
 24 when the camera was up here high. Mr.  
 25 Ciambriello had his right arm around her side,

and they were walking through that -- by that camera. Then they went through a door, down this long hallway. That's the long hallway that I saw from the back on that second camera. I don't believe that's the money room. I could be mistaken.

Q. Okay. And the other portion of this tape, sergeant, which appears to show the alleged victim drinking a soda; do you know when in time that was with regard to the alleged rape? Do you know if that was before or after the alleged rape?

A. I'm not sure. I'd have to check.

Q. The time?

A. Yeah.

MS. VEENSTRA: May I, your Honor?

THE COURT: You may.

Q. Do you see --

A. In the lower right hand corner it says 1900. So, I would have to say that would be after the incident.

Q. And would it be fair to say that the alleged victim was working alongside of the defendant at that time?

A. That's correct.

Q. Did it appear from information you received that there were employees that actually delivered money to that location after the alleged incident?

A. That's correct.

Q. Is it your belief that that is what is depicted on that portion of this tape?

A. Yes.

MS. VEENSTRA: I have no further questions.

MR. ARDITO: Just brief recross.

RECROSS EXAMINATION

BY MR. ARDITO:

Q. Detective, you interviewed my client, correct?

A. That's correct.

Q. And in interviewing him, you noticed he has a very heavy heavy Italian accent; is that true?

A. Yes.

Q. And you heard a voice besides the alleged victim on that tape; isn't that true? Another voice just now?

A. Yes.

Q. And that other voice wasn't Mr. Ciambriello, correct? There was a third voice?

A. I heard two other male voices.

Q. Two other males voices, correct? And you're saying -- you're testifying that this based on the time took place after the alleged assault, correct?

A. Yes, from the time, yes.

MR. ARDITO: All right. No further questions, your Honor.

THE COURT: Okay. Thank you very much. You may step down.

THE WITNESS: Thank you, your Honor.

MS. VEENSTRA: The Commonwealth would call Christopher Markey.

THE COURT: Okay.

CHRISTOPHER MARKEY, Sworn

THE WITNESS: Morning, your Honor.

DIRECT EXAMINATION

BY MS. VEENSTRA:

Q. Could you please state your name for the record?

A. Christopher Markey, M-A-R-K-E-Y.

Q. How are you employed?

A. I'm an assistant district attorney for Bristol County.

Q. I'd like to direct your attention to the month of May in the year 2001 and ask you whether you had an opportunity to review an alleged rape

regarding a defendant Francesco Ciambriello?

A. Yes, I did.

Q. And do you know who the lead investigator was on that case?

A. Detective John Otrando from the Attleboro Police Department.

Q. And at some point did you receive information from Sergeant Otrando regarding information regarding some surveillance tapes at the location of the alleged rape?

A. Yes.

Q. Were you aware of whether some of that surveillance activity had already been viewed by Sergeant Otrando?

A. Yes.

Q. And how did you know that?

A. I believe he made mention of it to me, and I said that we needed to get -- we should get someone -- we should get those tapes and obtain the tapes.

Q. And at some point do you know if Sergeant Otrando seized some tapes initially in the investigation?

A. I'm unsure if he seized them right off the bat, but I know I had conversation with him to get more tapes or get tapes; but he may have had some right then that we were making plans. I'm not

sure of that.

Q. And at some point did you have some communication with defense counsel Mr. Ardito regarding viewing some tapes?

A. Yes, I did.

Q. And were some arrangements made to meet with counsel to look at those tapes?

A. We made arrangements to have him view the tapes at our office in New Bedford at 888 Purchase Street on the fifth floor because we have some video equipment that we can use to look at tapes.

Q. At some point did you receive some tapes from Sergeant Otrando?

A. Yes. I believe I went to the Attleboro Police Department, picked those up, and brought those back to New Bedford.

Q. Do you know how many you seized?

A. I believe I had two or three.

Q. And you brought those back to New Bedford for the purpose of trying to view those on equipment that the district attorney's office had?

A. Yes. I was waiting. I made arrangements with Mr. Otrando -- I mean the attorney for the defendant to do it some afternoon I believe it was.

Q. And did you in fact attempt to do that?

A. Yes. Mr. Ardito came down, went to my office, and then two offices away is the video room where we would have that equipment. We went in there. We put the tape in, and we didn't have the proper equipment to view it. Everything was kind of going really fast. As a result of that, I think Mr. Ardito stayed for a little bit longer to view and see if he could make any adjustment. I remember I was doing something else in my office. So, I just went to my office for a little bit, and then Mr. Ardito came over, and we just -- he said, "It's not going to work." I said, "Okay. We'll go up to the armored car place and view the tapes there, and we'll make arrangements there."

Q. And that would be to view those tapes on the actual equipment that it was taped on?

A. Yes.

Q. And so, your attempts to view it at the district attorney's office were unsuccessful?

A. That's correct.

Q. And Mr. Ardito left?

A. Mr. Ardito left. I kept the tapes, and then I went to Attleboro District Court office and -- or

our office. I think we were trying to make arrangements to watch the video with Mr. Ardito again because at that point it was going to be my case; and what happened was I don't think -- there was some mix-up in communication between the two of us, and we didn't go that afternoon. I kept the tapes there. I gave them to Assistant District Attorney Chris Saunders. I said, "Look, I can't -- I'm not going to come back up here. Why don't you look at the tapes", because he was going to end up doing the probable cause hearing. And I left them in the Attleboro District Court office.

Q. And that would have been two, maybe three tapes?

A. Two, maybe three tapes, and that was some time if I remember correctly in the Summer of 2001.

Q. And you said that the purpose of that was so that Christopher Saunders could then meet defense counsel at the facility, the work place facility?

A. That's right. What happened in the meantime was it was decided that Chris was going to actually -- Chris Saunders was going to actually handle the case. It was going to be his first Superior Court case. He was going to do the probable cause hearing and do everything. Some

time towards the end of Summer of 2001 we made that decision. So, I said, "Just you keep it and handle the case."

THE COURT: When you said you left the tapes in the Attleboro District Court office, that's the DA's office?

THE WITNESS: Yeah, that's right. At 120 North Main Street.

Q. And did you have some conversation with Mr. Saunders about the fact he would be handling the case?

A. I did, and I said that he would be handling it. I had talked to his supervisor, and he said it would be fine for him to handle it; and at that point, you know, I'd check up on it once in a while. Hey, what's going on with this case? And then at some point, I don't know when it was, but I know when the case was pending, the defendant either became ill or was involved in some accident, and they continued the case over for a significant amount of time because of a serious injury to the defendant. I remember that. But that's basically how I remember ending it at that point.

Q. And do you know whether Chris Saunders ever

1 viewed those tapes with defense counsel at AMSA?

2 A. I don't know if he ever viewed it. I heard later

3 that Chris Abreu had viewed the tapes, and he's

4 another assistant DA attorney who worked in the

5 Attleboro District Court. That's the last --

6 Q. Now, did you ever receive those two or three

7 tapes back?

8 A. No.

9 Q. Did you ever take possession of any other tapes

10 seized by the Attleboro Police Department?

11 A. No.

12 Q. Would it be fair to say that some time in June of

13 2002, the case was assigned to me to prosecute?

14 A. Excuse me?

15 Q. Would it be fair to say --

16 A. Yes, it was. For you, yes.

17 Q. Can you report, Mr. Markey, whether a diligent

18 search of your office has been able to turn up

19 those tapes?

20 A. I went through every box and every unmarked video

21 that I have in my office to check to see if it

22 could be any relation to this case, and the

23 videos that I viewed and went through did not

24 have any correspondence to this case.

25 MS. VEENSTRA: I have no further

1 MR. ARDITO: I have no objection, your

2 Honor.

3 THE COURT: Okay.

4 MS. VEENSTRA: I have shared that with

5 counsel.

6 THE COURT: All right.

7 MS. VEENSTRA: I'd ask that that be

8 marked as an exhibit.

9 THE COURT: Okay.

10 (The affidavit was marked Exhibit No. 3

11 and received into evidence.)

12 MS. VEENSTRA: The Commonwealth would

13 call Christopher Abreu.

14 CHRISTOPHER ABREU, Sworn

15 DIRECT EXAMINATION

16 BY MS. VEENSTRA:

17 Q. Could you please state your name for the record?

18 A. My name is Christopher Abreu.

19 Q. And could you spell your last name, please?

20 A. It's A-B-R-E-U.

21 Q. And how are you employed, sir?

22 A. I am currently employed at the law offices of

23 G.M. Rego. I'm an attorney.

24 Q. And were you formerly an assistant district

25 attorney in Bristol County?

1 questions of this witness.

2 THE COURT: Mr. Ardito.

3 MR. ARDITO: Very briefly, judge.

4 Thank you.

5 CROSS EXAMINATION

6 BY MR. ARDITO:

7 Q. The last time you saw the tapes was when you

8 delivered them to the Attleboro district

9 attorney's office, correct?

10 A. That's correct.

11 Q. And you yourself never viewed the tapes in your

12 office, correct?

13 A. The only -- I think I did for about two minutes

14 when we -- you and I were sitting there in that

15 office; and all it did was kept -- you couldn't

16 understand anything on it.

17 MR. ARDITO: No further questions.

18 MS. VEENSTRA: No further questions of

19 this witness.

20 THE COURT: Thank you, Mr. Markey.

21 THE WITNESS: Thank you, judge.

22 MS. VEENSTRA: At this time, your

23 Honor, I would offer an affidavit of Christopher

24 Saunders. He was unavailable today due to a

25 medical appointment.

1 A. Yes, I was.

2 Q. And for how long were you employed with the DA's

3 office?

4 A. For approximately five years from 1997 to 2002,

5 September.

6 Q. And at some point were you assigned to the

7 Attleboro District Court district attorney's

8 office?

9 A. Yes, I was.

10 Q. And do you know your approximate time of service

11 for that office?

12 A. I was there for approximately seven months, and I

13 believe I left in February of 2002 and was

14 transferred to New Bedford.

15 Q. And at some point during your time with the

16 Attleboro District Court district attorney's

17 office, did you become aware of a case that was

18 pending, Commonwealth vs. Francesco Ciambriello?

19 A. Yes, I was.

20 Q. And at some point were you asked to assist

21 Assistant District Attorney Saunders?

22 A. Yes, I was.

23 Q. And can you describe that to the Court, please?

24 A. Well, I believe it was a day where ADA Saunders

25 had a trial, and my trials had pled out. So, he



1 asked me if I would simply go view a tape at an  
 2 armored car employment place.  
 3 Q. And were there some specific plans as to who was  
 4 supposed to go to that facility?  
 5 A. Yes. I was told that Attorney Ardito would be  
 6 there and also the security supervisor would be  
 7 there to watch the tapes with us.  
 8 Q. And did you receive some tapes to bring to that  
 9 location?  
 10 A. I believe so, yes.  
 11 Q. Do you recall how many tapes you received?  
 12 A. I want to say at least two, maybe more than two.  
 13 Q. Do you believe it was as many as six?  
 14 A. Possibly. It's tough to say. But more than two.  
 15 Q. More than --  
 16 A. Maybe three.  
 17 Q. Okay. Do you recall whether those tapes were  
 18 labeled in any way?  
 19 A. I do recall that they were labeled with letters  
 20 in black marker, I believe, with a circle around  
 21 it.  
 22 Q. Did you in fact go to AMSA and meet with defense  
 23 counsel for the purpose of viewing the tapes?  
 24 A. Yes, I did.  
 25 Q. And you brought the tapes with you?

1 hour possibly. And at some point in time, they  
 2 get up. And what we had to do was you had to  
 3 change different views of the cameras because  
 4 each camera was actually on the screen. So, we'd  
 5 be watching one segment. That would be them  
 6 sitting down. And there would be noise, and you  
 7 really didn't hear anything, but you'd just see  
 8 some movement. And then we would ask to see  
 9 another angle of the camera, and then that camera  
 10 angle would come up. So, at one point in time  
 11 they did get up from original location where they  
 12 were talking. You didn't hear anything. And  
 13 then they walked into a hallway. And I do recall  
 14 when they entered that hallway, I recall the  
 15 female saying, "I don't want to go back there."  
 16 I also recall the male had his hand not so much  
 17 around her waist, but towards her backside,  
 18 walking with her. And I recall that he did have  
 19 a firearm tucked in the belt in his back.  
 20 Q. So, your view of the walking of the hallway as  
 21 best you can describe it, is that a forward view,  
 22 a backward view, or a combination with side? As  
 23 best you can describe it.  
 24 A. The view that I remember is it's -- the view was  
 25 going forward down the hallway, and they were

1 A. Yes.  
 2 Q. Did you meet a member or an employee of AMSA at  
 3 that location?  
 4 A. Yes, I did.  
 5 Q. Do you remember his name?  
 6 A. I believe it was O'Brien, but I'm not totally  
 7 sure.  
 8 Q. Okay. Do you remember what he looked like?  
 9 A. White male. I'd say in his late thirties,  
 10 possibly thinning hair, maybe glasses, 180  
 11 pounds.  
 12 Q. And was he able to assist you in viewing those  
 13 tapes with counsel?  
 14 A. Yes. We went into the -- like it was a viewing  
 15 room where all the cameras were, and we put a few  
 16 video tapes in and did watch some segments of the  
 17 tapes.  
 18 Q. As best you can recall, can you describe what was  
 19 depicted on the tapes that you saw at AMSA?  
 20 A. From my recollection, the beginning of the tapes  
 21 were basically a male and a female sitting down.  
 22 It seemed like they were doing some work in a  
 23 room, and you really couldn't hear anything on  
 24 the tapes. And that was for a lengthy period of  
 25 time. I don't recall, but it was more than an

1 entering the hallway, and that's how I could see  
 2 his hand placement and also see the firearm  
 3 tucked in the back of his pants.  
 4 Q. And when you say that it was tucked in the back  
 5 of his pants, is that in the back, or on the  
 6 side, or --  
 7 A. It was just tucked into the back of his belt  
 8 area.  
 9 Q. Would that be on his left side or his right side?  
 10 A. I recall his left side.  
 11 Q. And when you say that he was walking down the  
 12 hallway with her, where was her body positioned?  
 13 Was it on his right side or his left side?  
 14 A. She was on his right side.  
 15 Q. And you said that you heard some words uttered?  
 16 A. Yes.  
 17 Q. Did you -- were you able to see any specific  
 18 facial expressions or obvious signs of demeanor?  
 19 A. No, I don't recall that.  
 20 Q. On either the male or the female?  
 21 A. Yeah. Nothing.  
 22 Q. Did you see what was depicted once they get down  
 23 the hallway?  
 24 A. They entered a room, but that's all that happened  
 25 at that point. Once they entered the room, you

1 didn't see anything. I was told there were no  
 2 cameras in that room.  
 3 Q. Okay. So, do you -- were you able to see how the  
 4 door gets opened?  
 5 A. I don't recall.  
 6 Q. And did that door -- when you say that you can't  
 7 see, you don't see anything after that? The door  
 8 closes?  
 9 A. Yes.  
 10 Q. Did at some point that door open?  
 11 A. Yes. I believe it was approximately five minutes  
 12 after that. I believe it was like a short period  
 13 of time. Maybe five minutes. The female exited  
 14 first, and then the male exited some time after  
 15 that.  
 16 Q. Again, did you see -- were you able to, or do you  
 17 recall any obvious signs of demeanor or facial  
 18 expressions?  
 19 A. No.  
 20 Q. On either of the two parties?  
 21 A. No. It was just walking from that room, first  
 22 the female and then later the male.  
 23 Q. And were you able to hear anything on that tape?  
 24 A. No.  
 25 Q. That portion of the tape?

1 saw a car pull up. There was some conversation,  
 2 and later the female went back into the building.  
 3 Q. And you said that another party arrived. Would  
 4 that be male or female?  
 5 A. I don't recall. I just remember a car.  
 6 Q. Did you see some interaction between the alleged  
 7 victim and that party who arrived?  
 8 A. Yes.  
 9 Q. Outside the building?  
 10 A. Yes.  
 11 Q. And then the alleged victim returned inside?  
 12 A. Yes.  
 13 Q. Can you describe, if you can -- you went to the  
 14 facility to view these tapes?  
 15 A. Yes.  
 16 THE COURT: Ms. Veenstra, just for a  
 17 second. You said you described some interaction  
 18 between this person who arrived and the woman  
 19 outside. What did you see?  
 20 THE WITNESS: It was just basically the  
 21 female walking up to that car, and I don't recall  
 22 if she went in the car or not, or if that person  
 23 from that car got out to talk. I just remember  
 24 some interaction taking place.  
 25 THE COURT: Okay.

1 A. No.  
 2 Q. In viewing those tapes, did you have an  
 3 opportunity to see anything that was depicted on  
 4 the outside of the building?  
 5 A. Yes. I do recall the female and the male later  
 6 smoking outside in the parking lot together.  
 7 Q. And do you know if that was later in time than  
 8 what was -- according to the tape than what was  
 9 depicted as them going into the room?  
 10 A. It was after the room. It was later in time.  
 11 Q. And you say that you saw who outside smoking?  
 12 A. The male and the female.  
 13 Q. Anybody else?  
 14 A. Not at first. At first I believe if my  
 15 recollection is correct, it was just the male and  
 16 the female smoking outside. Then the male went  
 17 inside again.  
 18 THE COURT: Was this the same male that  
 19 you'd seen on the tape before?  
 20 THE WITNESS: Yes.  
 21 THE COURT: Okay.  
 22 THE WITNESS: And the male and female  
 23 were outside smoking. At one point the male went  
 24 inside. Then if my recollection is correct,  
 25 another party actually went to that location. I

1 Q. Can you describe what, if any, security measures  
 2 were in place that you became aware of that day?  
 3 A. Well, it was a very secure facility. That's one  
 4 of the reason I actually remember going there and  
 5 viewing it. Because you had to be buzzed in a  
 6 couple of doors to get into the building. And  
 7 they had cameras in numerous places around, and  
 8 also I still remember that they had actually a  
 9 fingerprint entry. To get into a certain room,  
 10 you had to have the correct fingerprint to enter  
 11 the room. It was a pretty secure facility.  
 12 Q. And now, do you recall seeing anything else  
 13 depicted on the tapes during your viewing at  
 14 AMSA?  
 15 A. Not that I recall.  
 16 Q. And so, at some point yourself, counsel, and the  
 17 employee of AMSA finished viewing those tapes; is  
 18 that right?  
 19 A. Yes.  
 20 Q. And did you leave with those tapes?  
 21 A. I don't recall. I believe that I would have left  
 22 with the tapes. At the time the only reason I  
 23 would have left the tapes there was to provide  
 24 copies for the defense counsel and for the  
 25 district attorney's office because at the time we



1 did not have the technology to make copies, but I  
2 still don't think I would have done that. I  
3 think I would have brought the tapes back to the  
4 office, but I'm unsure.

5 Q. So, you don't have a specific memory of what  
6 happened to those tapes?

7 A. No. The only thing I remember is actually going  
8 there and viewing the tapes.

9 MS. VEENSTRA: I have no further  
10 questions of this witness.

11 THE COURT: Mr. Ardito.

12 MR. ARDITO: Yes.

13 CROSS EXAMINATION

14 BY MR. ARDITO:

15 Q. We viewed those tapes together, correct?

16 A. Yes.

17 Q. And we were there just about a couple of hours;  
18 isn't that true?

19 A. Yep, that's correct.

20 Q. So, we really didn't get to see all the tapes?

21 A. No, we did not.

22 Q. You stated on the direct examination that another  
23 person pulled up, and there was some interaction?

24 A. Correct.

25 Q. Do you remember seeing on any of the tapes that

1 person inside the facility?

2 A. I don't recall that.

3 Q. You testified on direct examination that before  
4 the alleged incident you saw Mr. Ciambriello and  
5 the alleged victim sitting together working?

6 A. Correct.

7 Q. During that period of time when you saw them  
8 sitting together working, did you see Mr.  
9 Ciambriello attack her in any way, shape, or  
10 form?

11 A. I did not see any type of struggle taking place.

12 Q. Do you recall seeing a video -- do you recall  
13 seeing on the video some time after the alleged  
14 incident Mr. Ciambriello and the alleged victim  
15 in a cafeteria type setting having a soda?

16 A. I don't recall that.

17 MR. ARDITO: No further questions,  
18 judge.

19 THE COURT: Ms. Veenstra?

20 MS. VEENSTRA: Nothing further of this  
21 witness.

22 THE COURT: All right. Thank you very  
23 much.

24 THE WITNESS: Thank you.

25 THE COURT: You may step down.

1 MS. VEENSTRA: Russell Castro.

2 RUSSELL CASTRO, Sworn

3 THE WITNESS: Good morning.

4 THE COURT: Good morning.

5 DIRECT EXAMINATION

6 BY MS. VEENSTRA:

7 Q. Could you please introduce yourself for the  
8 record?

9 A. Russell Castro, C-A-S-T-R-O.

10 Q. And how are you employed, sir?

11 A. Employed with the City of Attleboro. Police  
12 officer.

13 Q. And how long have you been a police officer with  
14 the City of Attleboro?

15 A. Approximately ten years.

16 Q. I'd like to direct your attention, Officer  
17 Castro, to the month of May in the year 2001, and  
18 ask you whether you were dispatched along with a  
19 number of other officers to AMSA located in the  
20 City of Attleboro?

21 A. Yes. Originally Sturdy Hospital.

22 Q. Okay. And at some point did you respond to AMSA?

23 A. Yes.

24 Q. And what other officers, if you recall, also  
25 responded to that location?

1 A. Officer Larsen and Detective Otrando.

2 Q. At that time did you have an opportunity to view  
3 the facility and some video surveillance?

4 A. Yes.

5 Q. Can you describe as best you recall what you saw  
6 depicted on the video surveillance?

7 A. On the video surveillance we seen the male and a  
8 female, Mr. Ciambriello and Kiernan the female --  
9 Q. The alleged victim?

10 A. -- the alleged victim walking through a room. I  
11 believe it was the money processing room. At  
12 that point the male had his right arm around her  
13 backside, lower back, upper buttocks, walking  
14 through the room. Then on another view, more of  
15 a back view, they walk down a hallway with the  
16 hand on the back and entering an office; and  
17 several minutes later, the female exited the  
18 office and went to the left.

19 Q. Can you estimate, if you can, about how long they  
20 were in that office?

21 A. I'd say less than four minutes.

22 Q. Did you ever see any tape which -- or segment or  
23 portion of a tape which may have depicted the  
24 inside of that office?

25 A. No.

1 Q. Did you hear any words that were spoken when  
2 viewing that tape?  
3 A. Not that I recall.  
4 Q. Did you note any obvious facial expressions or  
5 expressions of demeanor on either the alleged  
6 victim or Mr. Ciambriello?  
7 A. No, I did not.  
8 Q. Now, I'm going to direct your attention to later,  
9 much later in the investigation. Were you asked  
10 by Sergeant Otrando of your department to bring  
11 some tapes to the Raynham Police Department,  
12 specifically Deputy Chief Louis Pacheco?  
13 A. Yes.  
14 Q. And do you know what the purpose of that was?  
15 A. For further investigation to try to get any other  
16 information out of the tapes.  
17 Q. And did you bring some tapes to Deputy Chief  
18 Pacheco?  
19 A. Yes, I did.  
20 Q. And how many did you bring?  
21 A. Three.  
22 Q. And were they labeled?  
23 A. I believe they were labeled.  
24 Q. And how were they labeled?  
25 A. A, B, and C.

1 see a reflection in door number 1's window of a  
2 symbol of a male and a female walking through  
3 that room. The male has his arm around that  
4 female's backside.  
5 Q. Did you see anything else depicted on that tape?  
6 A. Yeah. Several minutes later they were seen  
7 walking down a hallway. I refer to it as a money  
8 cashing room because there was all counting  
9 machines there, and the male and the female were  
10 walking down the corridor. The male has his arm  
11 around the backside of the victim; and then as  
12 they're coming off the screen, you can see the  
13 hand, his left hand come up to the elbow.  
14 Q. Okay. And that was depicted on the tape?  
15 A. Yes.  
16 Q. Now, you said that you saw a similar scene at the  
17 night -- on the night of the alleged incident; is  
18 that right?  
19 A. Yes.  
20 Q. What is the difference between those two  
21 depictions of the two of them coming down that  
22 hallway? What was the difference between them?  
23 A. On this one here they're coming at the camera.  
24 The one that I viewed at the scene, they were  
25 walking -- the camera was the backside of them,

1 Q. And did you have an opportunity to work with  
2 Deputy Chief Pacheco and view those tapes?  
3 A. Yes.  
4 Q. And can you -- let me ask you. Was he able to  
5 retrieve some images from those tapes?  
6 A. Yes.  
7 Q. And do you know if those were then transferred  
8 onto a videotape?  
9 A. Yes, they were.  
10 Q. And do you know if a copy of that videotape was  
11 provided to me?  
12 A. I brought it back to Sergeant Otrando, and I  
13 believe he's given it to you, yes.  
14 Q. And did you have an opportunity to view that  
15 tape?  
16 A. Yes, I did.  
17 Q. And can you describe what, if anything, was  
18 depicted on the tape? What was depicted? What  
19 did you see?  
20 A. The tape that was made?  
21 Q. Yes.  
22 A. In the first scene you're going to see -- I  
23 believe it's like the cashiers room where they  
24 check out. The trucks will come in and go. I  
25 believe that's the room it is. You're going to

1 more toward the backside of them.  
2 Q. Okay. While walking down that hallway -- strike  
3 that. Did you notice or -- describe what else  
4 was depicted on that tape.  
5 A. Later on, I believe it was like 1900 hours, the  
6 female, the alleged victim comes up, puts a soda  
7 can on the door rim. It's like a shelf on door  
8 #2, I believe it was. And several minutes later  
9 she walks back to that, and it appears that the  
10 defendant's checking in or cashing out a truck,  
11 because you can hear -- you can't really hear,  
12 but you can hear the money banging on the counter  
13 in one of the volumes; and then the alleged  
14 victim is standing to the left at door 2 which is  
15 probably like three to four feet from door 1, and  
16 she's handing the alleged defendant looks like  
17 rubber bands to strap the money.  
18 Q. Would it be fair to say they appear to be working  
19 together?  
20 A. Yes.  
21 Q. Did it appear or sound as if there was more than  
22 the alleged victim and Mr. Ciambriello in that  
23 immediate vicinity?  
24 A. Yes.  
25 Q. There were more than those two voices?

1 A. I don't know about the voice, but you can believe  
 2 that there's two males there and the female. I'd  
 3 have to view it.  
 4 Q. The original tapes that you brought to Raynham  
 5 Police Department Deputy Chief Pacheco, were  
 6 those subsequently given back to you?  
 7 A. Yes.  
 8 Q. And you said that -- or strike that. Did you  
 9 turn those over to someone?  
 10 A. Yes, I did.  
 11 Q. Who did you turn those over to?  
 12 A. I returned them back to Sergeant Otrando.  
 13 MS. VEENSTRA: If I could have one  
 14 moment, your Honor? I have no further questions  
 15 of this witness.  
 16 THE COURT: Mr. Ardito.  
 17 CROSS EXAMINATION  
 18 BY MR. ARDITO:  
 19 Q. Detective, did you happen to see any tape of  
 20 them -- when I mean them, I mean Mr. Ciambriello  
 21 and Ms. Kiernan. Did you ever see any tape of  
 22 them working together?  
 23 A. Just that one at the end of that made tape by  
 24 Chief Pacheco.  
 25 Q. And which tape -- could you describe that? I'm

1 not sure --  
 2 A. It was -- they were at the two doors that I just  
 3 described, door 2 and door 1. She appeared to be  
 4 handing him elastics.  
 5 Q. And that was the one that allegedly they're  
 6 working together after the incident?  
 7 A. Yes.  
 8 Q. Nothing prior to?  
 9 A. Not to my recollection, no.  
 10 Q. Did you see any video or any tape of another  
 11 woman in the building?  
 12 A. I did not, no.  
 13 Q. Did you see the video of the alleged victim  
 14 leaving the area where she alleged the assault  
 15 took place?  
 16 A. On the night of it happening?  
 17 Q. Yes.  
 18 A. The night of it happening, they left I guess it  
 19 was the office area. They left the office area.  
 20 She left the office area.  
 21 Q. And isn't it true it was a clear picture of her  
 22 leaving? She was walking towards the camera?  
 23 A. She walked out and took a left.  
 24 Q. And you could see her very plainly?  
 25 A. I could see her. I couldn't see her face if

1 that's what you're asking me.  
 2 Q. All right. What about her clothes?  
 3 A. I don't recall her clothes.  
 4 Q. You can't tell us if her clothes were ripped or  
 5 torn --  
 6 A. No.  
 7 Q. -- or together, not together?  
 8 A. No, I don't have --  
 9 Q. You have no recollection?  
 10 A. No.  
 11 MR. ARDITO: No further questions,  
 12 judge.  
 13 THE COURT: Ms. Veenstra?  
 14 REDIRECT EXAMINATION  
 15 BY MS. VEENSTRA:  
 16 Q. Let me ask you, Officer Castro, if her clothes  
 17 had been disheveled in any way, would you have  
 18 noticed it?  
 19 A. From that view, probably not, in my recollection.  
 20 Q. Okay.  
 21 MR. ARDITO: Redirect, your Honor?  
 22 THE COURT: Yep.  
 23 MR. ARDITO: Recross.  
 24 RECROSS EXAMINATION  
 25 BY MR. ARDITO:

1 Q. Is it your testimony, detective, that on a rape  
 2 case if you have a video of someone walking away  
 3 from the incident, you're not looking at that  
 4 person?  
 5 A. I couldn't see with the clarity of the film, to  
 6 my recollection, and I only seen the tape for a  
 7 short time. I'm not the investigating detective.  
 8 Q. So --  
 9 MR. ARDITO: No further questions.  
 10 THE COURT: Okay.  
 11 MS. VEENSTRA: Nothing further.  
 12 THE COURT: Thank you very much. You  
 13 may step down.  
 14 MS. VEENSTRA: Deputy Chief Louis  
 15 Pacheco. Your Honor, I would be offering this  
 16 evidence just to describe the technology for the  
 17 Court.  
 18 THE COURT: Okay.  
 19 LOUIS PACHECO, Sworn  
 20 DIRECT EXAMINATION  
 21 BY MS. VEENSTRA:  
 22 Q. Could you please introduce yourself for the  
 23 record?  
 24 A. My name is Louis, L-O-U-I-S, Pacheco,  
 25 P-A-C-H-E-C-O. I'm a police officer in the Town

1 of Raynham, and I currently hold the rank of  
2 deputy chief.  
3 Q. How long have you been with the Raynham Police  
4 Department?  
5 A. Approximately thirty years.  
6 Q. And let me ask you, what is REACT, R-E-A-C-T?  
7 A. REACT is a Regional Electronic and Computer  
8 Crimes task force stationed in Raynham. It has  
9 about twenty-eight different agencies involved,  
10 and we deal with computer and video forensics.  
11 Q. And what is a multiplex system, if you can?  
12 A. Basically it's recording; and when talking about  
13 video, it's recording multiple images to the same  
14 tape from different cameras.  
15 Q. And would that be a normal videotape that it's  
16 recorded on?  
17 A. Could be, yes.  
18 Q. If one tried to view a videotape in which a  
19 number of images were depicted on that same tape,  
20 what would one see?  
21 A. If you used a normal VCR, you'd see a fast  
22 collage of pictures go by the screen.  
23 Q. Would it be fair to say that they may not be  
24 decipherable?  
25 A. They wouldn't be until you slowed the speed up on

1 the VCR, yes.  
2 Q. And is it more involved than just slowing it, or  
3 do you have to isolate, or can you describe what,  
4 if any, procedure you would go through to  
5 retrieve images?  
6 A. Well, basically a video image is laid down at  
7 30 -- 29.97 frames per second when you watch a  
8 regular video, normal regular video. Obviously  
9 the tapes are only two hours long. So, if you  
10 want to put multiple cameras on, you can't keep  
11 thirty frames per second because the tape would  
12 only last two hours for one camera and more for  
13 more cameras. So, the technology of a multiplex  
14 system picks certain frames which are made from  
15 two fields, the odd and the even, and lay them  
16 down on the videotape as it runs depending on --  
17 and how many frames you get laid on depends on  
18 how long the time lapse is. So, if you had your  
19 tape on for forty-eight hours, you're taking a  
20 two hour tape and laying down forty-eight hours  
21 of pictures. If you have your system set up for  
22 twenty-four hours, then you're putting  
23 twenty-four hours of pictures on two hours.  
24 THE COURT: And how does the machine  
25 pick the frame? Is it a time issue, or is it by

1 if there's movement?  
2 THE WITNESS: It's generally a time  
3 issue, your Honor. However, it could be set by  
4 the operator. Different systems -- for instance,  
5 if you had a camera setting up in this particular  
6 courtroom, you may want the camera that's got the  
7 witness on it more than the camera that's taking  
8 the back of the thing. So, you adjust it so so  
9 many frames get recorded from that camera.  
10 Depending on how the system is set up, you could  
11 adjust it manually. Most just rotate around. A  
12 frame, a frame, a frame, a frame.  
13 Q. So, with those systems, is it fair to say that  
14 you may not have or probably would not have  
15 continuous coverage of one particular location?  
16 A. Absolutely true.  
17 Q. At some point, deputy chief, were you asked to  
18 assist Sergeant --  
19 THE COURT: Let me just ask another  
20 question before you go from that. So, if you  
21 have a system where you've let's just say put in  
22 a two hour tape to take an eight hour shift, that  
23 tape is going to cover the whole eight hours, but  
24 it's going to record the frames as it has been  
25 told to pick those frames?

1 THE WITNESS: Yes, as it's been told to  
2 depict them, and so many frames to make it fill  
3 the eight hours.  
4 THE COURT: Right.  
5 THE WITNESS: So, if it was a  
6 twenty-four hour tape, you'd have less frames.  
7 You'd have one frame, for instance, every three  
8 seconds. If it was forty-eight, you'd have one  
9 frame every six seconds.  
10 THE COURT: So, if you have a system  
11 like the one that was involved in this case where  
12 there are six VCR screens that you can look at of  
13 these cameras taking the videos, and they're  
14 recording however they're set up on the time,  
15 each of those screens is going to cover -- the  
16 tapes for those VCRs is going to cover the period  
17 that it's set for? Am I making myself clear?  
18 THE WITNESS: It will cover the period  
19 of time, and depending on the settings of the  
20 unit, which I never saw, it would -- how many  
21 frames you get per second. So, you could get --  
22 you're supposed to get 29.97 frames per second.  
23 As you extend that tape over two hours, that  
24 drops down to -- some systems you only get one  
25 frame every ten seconds.

THE COURT: But you could cover -- you could set it to cover eight hours or twenty-four hours or forty-eight hours?

THE WITNESS: Yes, ma'am. Yes, your Honor.

THE COURT: Okay.

Q. And do you know what, if any, setting was in place with regard to an alleged incident at Armored Motor Services of America in May of 2001?

A. I have no personal knowledge of what the settings were or anything. I may -- you may get some information off of the tape that we did. However, those are adjustments that are made at the system. You would have to go to the scene and look.

Q. And you were actually asked by the Attleboro Police Department to assist them in retrieving some images; is that right?

A. Yes, I was.

Q. And were you able to retrieve some images which appear to depict a male and female walking down a hallway at that location?

A. Yes, I did.

Q. And were you also able to retrieve some depictions of a female working near a door with a

soda and some voices in the background?

A. Yes, I was.

Q. And were you working with three tapes when asked to assist?

A. Yes.

Q. Were those tapes ultimately returned to the Attleboro Police Department?

A. Yes.

Q. And you were able to provide a videotape of the images that you were able to retrieve?

A. Yes. Generally at REACT what we do is the police officers bring the tape in, make an appointment to bring the tape in. We digitize the tape. So, we take it from an analog signal to a digital signal. Once you have it as a digital signal, it's a data base, and you can play it, put it back. You don't destroy the tape. On a regular tape if you pause a regular tape or you do anything with it, you're actually destroying the tape, because the heads are still spinning, but the tape's stopped. So, you're wearing off the oxide. So, by digitizing it allows you to work on it, you know, ad infinitum.

THE COURT: Do you recall what period of time -- what the hours over which these --

that these tapes covered?

THE WITNESS: I don't recall that right now, your Honor.

THE COURT: Do you recall whether they were -- they each covered the same amount of time?

THE WITNESS: The section that I looked at, that I was asked to examine was relatively the same amount of time, the same day and the same hour.

THE COURT: On each tape?

THE WITNESS: On each tape.

THE COURT: Okay.

MS. VEENSTRA: I have no further questions of this witness.

THE COURT: Mr. Ardito.

MR. ARDITO: Very briefly, judge.

CROSS EXAMINATION

BY MR. ARDITO:

Q. You were able to transcribe -- transpose one copy of the tape for the Attleboro police, correct?

A. I didn't hear the question.

Q. I'm sorry. You were able to make a copy?

A. Yes. I changed the original tape to digital and then played the digital back onto a VCR, which

you can have more copies or whatever you want.

Q. And during this process you were able to view the three tapes that the Attleboro police took to your office, correct?

A. Pieces of them. I didn't view the whole thing.

Q. You didn't view the whole thing?

A. No.

Q. And in your work, the only thing you were able to copy for the Attleboro police was a couple walking down an aisle?

A. That was what they had asked me to reproduce, yes, sir.

Q. And there was a little conversation with the alleged victim and a soda can and some voices in the background, correct?

A. Yes, sir.

Q. There was nothing else on those tapes?

A. Not that I saw, sir.

MR. ARDITO: No further questions.

THE COURT: Ms. Veenstra?

MS. VEENSTRA: I have nothing further.

THE COURT: Thank you very much.

Anything further, Ms. Veenstra?

MS. VEENSTRA: No, your Honor.

THE COURT: Commonwealth rests?

MS. VEENSTRA: Yes, your Honor.

THE COURT: Mr. Ardito, anything further?

MR. ARDITO: Just a closing regarding the motion to dismiss, your Honor.

THE COURT: Okay. Why don't I hear you.

MR. ARDITO: Briefly, again, we've heard testimony from Chris Abreu the Commonwealth's witness. He was the assistant district attorney that at the time viewed the tapes with myself. He testified under direct examination that he saw Ms. Kiernan and Mr. Ciambriello working together at a bench and then get up and leave. In the grand jury investigation, in this report she states that -- and I'm sure she's going to testify to -- that he began his assault while they were sitting down. That he had his arms around her, he had his legs around her, he was unbuttoning her blouse, he was biting her, he was massaging her. We just heard from the district attorney who said that he would have testified that that would have happened, that they were working together, they got up, and they left. It's issues like that that make the

losing of this tape so prejudiced.

Again, on the tape and ultimately grand jury testimony, Ms. Kiernan calls a friend of hers who arrives. And we heard testimony that Mr. Saunders -- Mr. Abreu saw this young lady show up, and they were outside. The tape clearly showed that they were smoking outside, and they described that in their grand jury testimony. Then this young lady goes into the building with the alleged victim, and they're all sitting together. Then this lady leaves of course, and the rest is not on the tape. The tapes clearly showed when we saw them that there was a cafeteria where Mr. Ciambriello asked her for soda, and she says she -- she says in the grand jury report that that never happened. Yet we saw her with a can of soda after the incident.

These tapes are vitally important to any defense we have. You couldn't possibly cross-examine any witness thoroughly unless we had these tapes. They show a completely different picture. They show the demeanor which was asked for, and I state that in my motion when one of the grand jurors asked the police what was her facial expression like. I disagree with the

detective. I mean it was clear when she left the ladies room. Certainly I would think a jury would want to see this four or five minute interlude, what she looked like when she walked out; and the camera was clearly on her face, clearly on her body. She turned into the camera and walked to the ladies room. Without these tapes, we are crippled, judge. We need these tapes to try the case.

Now, if they were lost by the police department, if there was a mishandling between the district attorney's office and the police department, then so be it. This case should be dismissed. There is case law. I cite case law. This case should not go forward. You've handcuffed us.

THE COURT: Mr. Ardito, what I understood from these witnesses is that the tapes that you do have or the piece that you do have covers the whole period of time when she was -- when Ms. Kiernan and Mr. --

MR. ARDITO: It's Ms. Kiernan and Mr. Ciambriello, your Honor.

THE COURT: -- Ciambriello were at the facility that night. It just doesn't give the

same views that you're talking about.

MR. ARDITO: No, your Honor.

THE COURT: Do you agree with that?

MR. ARDITO: No, I disagree. The views we're talking about are on the three tapes that were never transcribed.

THE COURT: No, no, no, I understand that. What you're saying is there were views on other tapes --

MR. ARDITO: Correct.

THE COURT: -- that were not transcribed. But these tapes that they do have and were transcribed cover the same period of time.

MR. ARDITO: They can't, because there are other people in the other tapes. How can they cover the same period of time?

THE COURT: I understood Chief Pacheco to say that the way this system works, each of the tapes that he looked at covered the same period of time before and after the alleged assault.

MR. ARDITO: Then --

THE COURT: But they don't show what you say the other tape shows. So, they don't



show the same views, but they cover the same period of time. You say that's not correct?

MR. ARDITO: I disagree, because I know what I saw. We saw other tapes.

THE COURT: But do you understand my question?

MR. ARDITO: Yes. Yes, and I disagree with the chief.

THE COURT: Okay. All right.

MR. ARDITO: How is that possible, your Honor? He's showing us he transcribed a period of time that they were working, that they walked from room 1 to room 2 and down the aisle. Then he goes back to I believe it's 1900 and -- I forgot the exact time -- where again she's working with another person. Where is -- I mean he himself testified that if there were any images, he would have picked them out.

THE COURT: That's what I'm saying. The views that you say you saw are not on these tapes.

MR. ARDITO: Correct.

THE COURT: But that doesn't mean that it doesn't cover the whole period of time that you're concerned about. These tapes cover the

same period of time.

MR. ARDITO: Yes.

THE COURT: Okay.

MR. ARDITO: Yes.

THE COURT: All right. Okay.

MR. ARDITO: Now I understand.

THE COURT: Ms. Veenstra.

MS. VEENSTRA: Thank you, your Honor.

I'd ask your Honor not to dismiss this case. I know that counsel is asking for a dismissal. I'd suggest that that is a drastic remedy in a case in which it comes down -- the central issue in this case is what happened when they went into that room and were in that room for five minutes. That has always been the issue in this case, and that is the central issue.

The cases that talk about dismissal is when the defendant is foregone from any possible defense or a theory of defense. Counsel has suggested I know to me that this is an issue of consent, and the issues that he raises for reasons to need the tape, your Honor, I believe are adequately addressed in my motion. It is much conduct that the alleged victim herself has already testified to under oath. For example, if

the witness says as she initially did to the police that she was dragged into that room, she testified before the grand jury that she was not in fact dragged. I believe she indicated that she was guided. She cannot now come before any court and reasonably be expected to say that she was dragged. The alleged victim in this case actually admitted that she was allowed outside by the defendant who had to buzz her out to smoke and talk with her friend. That is not something she can now deny. So that, the issue -- the depiction on the tape of them walking down the hallway I'd suggest is important. The depiction of her talking and working with the defendant after the alleged incident is very important to the defendant obviously. Those important depictions will be before the fact finder.

Counsel suggests a very drastic remedy. I suggest to the Court that there are less drastic remedies. If this Court were to find that some remedy -- this defendant needs some remedy to get a fair trial, the cases that the Commonwealth and I believe the defendant cite, there are other alternatives. The Court can obviously consider suppression of any of that

testimony, any testimony regarding what was depicted on the tapes like the tapes never existed. Tactically for a defendant I would suggest that that would be his call. Or the Court's. There is I think possible based on testimony here that there may be a way to stipulate as to what was depicted on those tapes and put that before the fact finder. Counsel has not suggested to me -- and I think he may be in a difficult position because he may be a witness, but he has not suggested to me that what was -- what has been described as depicted is different than his recollection. So that, a stipulation may be possible. Counsel with a stipulation could also have curative or a sort of instruction by the Court that any discrepancy or doubt as to what was depicted on the missing evidence would be in the defendant -- would need to be in favor of the defendant. And counsel could lastly argue that the Commonwealth has lost evidence.

So, I'd suggest that the remedy counsel seeks here is drastic, and I'd ask the Court not to dismiss the case, but allow this case to go to trial and to allow the alleged victim her day in court. Thank you.

THE COURT: Thank you very much.

MR. ARDITO: Your Honor, I have a last minute motion -- I don't know if it reached the Court -- regarding --

THE COURT: I'm sorry. What?

MR. ARDITO: I'm sorry, your Honor. I filed a last minute motion last week knowing we were going to be here today about a gag order. Apparently I've got every TV station in the neighborhood in the State of Rhode Island and Massachusetts contacting both the defendant and -- the victim is giving interviews about how these lost tapes are going to hurt her in a civil lawsuit. I filed a motion. I'd like to have this stop. It's bad enough we don't have the tapes. Now she's out there saying she'll never get a fair trial. So, if there's any way we could --

THE COURT: Okay. Ms. Veenstra, do you have a position on this?

MS. VEENSTRA: Your Honor, I don't. I can tell the Court that there have been a number of statements. This case has garnered some press. We are scheduled for trial on September 9th. I'd leave that to the Court's discretion.

THE COURT: Okay. I don't have it in the file, but we'll find it, and I'll rule on it.

MR. ARDITO: Thank you, judge.

THE COURT: Okay.

(The Court recessed at 11:50 a.m.)

CERTIFICATE

I, Lori R. Saulnier, Official Court Reporter, do hereby certify that the foregoing record, Pages 1 through 82, is a complete, accurate, and true transcription of my stenographic notes taken in the aforementioned matter to the best of my skills and ability.

  
LORI R. SAULNIER  
Official Court Reporter

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